2005-2006

HOUSE
JUDICIARY IV

COMMITTEE
MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
2005 Session
Book 1

REPRESENTATIVE JENNIFER WEISS, CHAIR

Representatives Rick Glazier and Joe Kiser
Vice Chairs

Susan Doty, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

JUDICIARY IV
2005 – 2006 SESSION



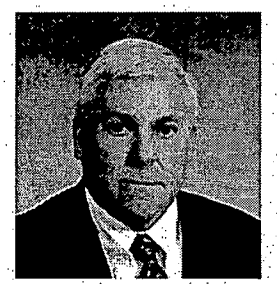
Rep. Jennifer Weiss
Chair



Rep. Rick Glazier
Vice chair



Rep. Joe Kiser
Vice chair



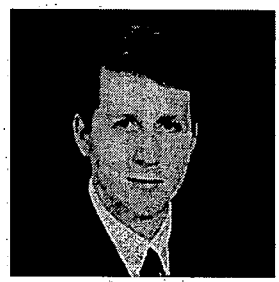
Rep. Bill Culpepper



Rep. Leo Daughtry



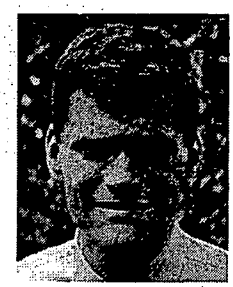
Rep. Beverly Earle



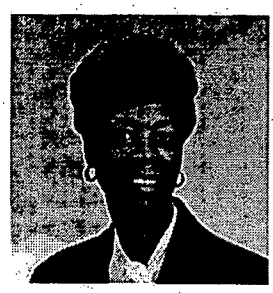
Rep. Bryan Holloway



Rep. Carolyn Justus



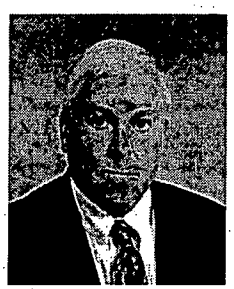
Rep. Grier Martin



Rep. Earline Parmon



Rep. Karen Ray



Rep. Culpepper
Ex-officio



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio



Rep. Hackney
Ex-officio

ATTENDANCE

JUDICIARY IV

(Name of Committee)

DATES	3/3/05	3/17/05	3/24/05	3/29/05	3/31/05	4/5/05	4/12/05	4/19/05	4/26/05	4/28/05	5/3/05	5/5/05	5/10/05	5/12/05	5/17/05
WEISS, Jennifer CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	–	✓	✓	
GLAZIER, Rick V-CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
KISER, Joe V-CHAIR	✓	✓	✓	✓	✓	✓	✓				✓	✓		✓	
CULPEPPER, Bill	✓						✓		✓		✓		✓	✓	
DAUGHTRY, Leo		✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓	
EARLE, Beverly	✓							✓	✓		✓		–		
HOLLOWAY, Bryan	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	–	✓	
JUSTUS, Carolyn		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
MARTIN, Grier	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	
PARMON, Earline	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓		✓	✓	
RAY, Karen	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓	
Ex-Officio:															
Cunningham, Pete									✓						
Culpepper, Bill															
Eddins, Rick															
Hackney, Joe															
	SB 41	HB 451	HB 1334, 1650	HB 277	HB 821										

meeting canceled

ATTENDANCE

JUDICIARY IV

(Name of Committee)

DATES	5/19/05	5/24/05	5/26/05	5/31/05	6-28-05	6-30-05	7-12-05	7-19-05	7/19 4:40pm	7/28/05	8/2/05	8/9/02 10AM	8/9/05 1:00pm	8/11/05	8/22/05
WEISS, Jennifer CHAIR	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
GLAZIER, Rick V-CHAIR	✓	✓	–	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
KISER, Joe V-CHAIR	✓	–	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓		✓
CULPEPPER, Bill	✓	–						✓	✓				✓		
DAUGHTRY, Leo	✓	✓	✓	✓	✓			✓	✓				✓	✓	✓
EARLE, Beverly	–	–						✓	✓			✓	✓		
HOLLOWAY, Bryan	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓	✓	
JUSTUS, Carolyn	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
MARTIN, Grier	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
PARMON, Earline	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓
RAY, Karen	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓		✓
Ex-Officio:															
Cunningham, Pete									✓				✓		
Culpepper, Bill													✓		
Eddins, Rick					✓				✓						
Hackney, Joe									✓				✓		

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0048	Miller	STOLEN REGISTRATION PLATES REPLACED - NO FEE.	H	Ref To Com On Judiciary IV	02-03-05	
H0076	Holliman	BAN SMOKING IN RESTAURANTS.	*HF	Failed 2nd Reading	02-07-05	05-12-05
H0176	Clary	CRIMINAL RECORDS CHECKS/LTC CHANGES.	H	Ref To Com On Judiciary IV	02-10-05	
H0277	Glazier	ESTABLISH CHILD ASSESSMENT RESPONSES.	*HR	Ch. SL 2005-55	02-17-05	03-30-05
H0347	Glazier	AG DEVELOPMENT/ FARMLAND PRESERVATION	*H	Ref To Com On Agriculture/ Environment/ Natural Resources	02-23-05	05-24-05
H0448	Glazier	COMPLAINTS AGAINST SCHOOL BOARD MEMBERS.	*H	Ref To Com On Education/Higher Education	03-16-05	05-12-05
H0451	Glazier	ADOPTIVE FAMILIES/ DHHS/CRIM. CHECKS.	*HR	Ch. SL 2005-114	03-03-05	04-04-05
H0634	Tolson	JUDICIAL DEPT. CRIMINAL BACKGROUND CHECKS.-AB	*H	Re-ref Com On Finance	03-15-05	03-28-05
H0650	Haire	BUSINESS COURT CASES/ FEE.	*HR	Ch. SL 2005-425	03-16-05	03-28-05
H0661	Glazier	RESP. INDIVIDUALS LIST/EXPUNCTION PROCESS.	*HR	Ch. SL 2005-399	03-16-05	05-25-05
H0687	Gibson	PIRATING MOVIES.	*HR	Ch. SL 2005-301	03-17-05	05-02-05
H0723	Glazier	UNC/CRIMINAL RECORD CHECKS/FEE.-AB	*H	Re-ref Com On Finance	03-17-05	05-26-05
H0762=	Culpepper	REAL PROPERTY ELECTRONIC RECORDING.	H	Ref To Com On Judiciary IV	03-17-05	
H0764=	Culpepper	SUBORDINATION AGREEMENT/REGISTRA. AMENDMENTS.	H	Ref To Com On Judiciary IV	03-17-05	
H0765	Culpepper	PLANNED COMMUNITY ACT AMENDMENT.	H	Ref To Com On Judiciary IV	03-17-05	
H0801=	Glazier	CHILD CUSTODY/ GUARDIANSHIP JURISDICTION.	*HR	Ch. SL 2005-320	03-21-05	04-13-05
H0821	Glazier	EVIDENCE/SPEED-MEASURING INSTRUMENTS.	HR	Ch. SL 2005-137	03-21-05	03-31-05
H0822	Glazier	BLAKELY DECISION/ CONFORM STATE LAW.	*HR	Ch. SL 2005-145	03-21-05	04-06-05
H0877	Justus	FORECLOSURE NOTICE OF SALE/DISP. OF PROCEEDS.	*H	Ref To Com On Judiciary II	03-24-05	05-26-05
H0878	Justus	CONFERENCE OF CLERKS OF SUPERIOR COURT.	*HR	Ch. SL 2005-100	03-24-05	04-13-05
H0917=	Justus	AUTHORIZE JUDGE/ CONCEALED WEAPON IN CTHS.	H	Re-ref Com On Judiciary III	03-28-05	05-24-05
H0991	Starnes	BAN UNDERAGE DRINKING.	H	Ref To Com On Judiciary IV	03-30-05	
H1133	Dickson	COUNTY GOV'T. CRIMINAL RECORDS CHECKS.	*H	Ref To Com On Judiciary I	04-06-05	05-02-05

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

2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1176	Weiss	PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.	*HR	Ch. SL 2005-401	04-12-05	05-02-05
[redacted]1176	Weiss	PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.	*HR	Ch. SL 2005-401	05-05-05	05-11-05
[redacted]176	Weiss	PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.	*HR	Ch. SL 2005-401	05-18-05	05-25-05
H1182	Culp	AMEND UCCJEA TO DEFINE DE FACTO CUSTODIAN.	H	Ref To Com On Judiciary IV	04-12-05	
H1240	Culpepper	VACATION RENTAL ACT AMENDMENTS.	*HR	Ch. SL 2005-292	04-18-05	04-20-05
H1262	Weiss	AUTH. SOCIAL WORK BD. TO EMPLOY PERSONNEL.	HR	Ch. SL 2005-129	04-18-05	04-26-05
H1271	Culpepper	AMEND AUCTIONEER LICENSING LAWS.	*HR	Ch. SL 2005-330	04-19-05	05-05-05
H1323=	Glazier	ESTABLISH NC INNOCENCE INQUIRY COMMISSION.	*H	Passed 3rd Reading	04-20-05	08-09-05
$ H1345	**Haire**	**LIMIT CERTAIN SELF-SERVICE DRUG PURCHASES.**	**H**	**Re-ref Com On Judiciary IV**	**06-22-05**	
$ H1367	**Hilton**	**WAIVE MARR. LIC. FEE/ PRE. COUNSELING/FUNDS.**	**H**	**Ref to the Com on Judiciary IV and, if favorable, to the Com on Appropriations**	**04-21-05**	
H1373	Culpepper	JUDICIAL APPOINTMENT/ VOTER RETENTION.	H	Ref To Com On Judiciary IV	04-21-05	
H1375	Culpepper	CHILD SUPPORT REFORMS.	*HR	Ch. SL 2005-389	04-21-05	05-04-05
H1392	Glazier	FAILURE TO RETURN HIRED MOTOR VEHICLES.	*HR	Ch. SL 2005-182	04-21-05	05-19-05
[redacted]434	Glazier	SIGNATURE CONFIRMATION UNDER RULE 4.	*HR	Ch. SL 2005-221	04-21-05	05-04-05
H1472	Kiser	RESENTENCE AFTER APPELLATE REVIEW.	H	Ref To Com On Judiciary IV	04-21-05	
H1484	Culpepper	DWI AFTER CONVICTION OF DWI WITH A DEATH.	H	Ref To Com On Judiciary IV	04-21-05	
H1485	Culpepper	SEARCH WARRANTS/AUDIO & VIDEO TRANSMISSION.	HR	Ch. SL 2005-334	04-21-05	05-05-05
H1486	Culpepper	FELONY DEATH BY VEHICLE.	*H	Re-ref Com On Appropriations	04-21-05	05-10-05
H1503	Martin	REGIONAL PUBLIC TRANSPORTATION LIABILITY.	*HR	Ch. SL 2005-160	04-21-05	05-04-05
H1504	Martin	LAW ENFORCEMENT OFFICER DISCIPLINE.	H	Ref To Com On Judiciary IV	04-21-05	
H1514	Ray	RECKLESS ENDANGERMENT.	H	Re-ref Com On Judiciary IV	04-21-05	06-13-05
H1514	Ray	RECKLESS ENDANGERMENT.	H	Re-ref Com On Judiciary IV	07-07-05	
H1543	Ray	AUTOPSY PHOTOS NOT PUBLIC RECORD.	*HR	Ch. SL 2005-393	04-21-05	05-31-05
H1547	Parmon	AMEND PUBLIC BUILDING CONTRACT LAWS.	H	Ref To Com On Judiciary IV	04-21-05	
S0041=	A. B Swindell	CRIMINAL RECORDS	*HR	Ch. SL 2005-4	03-01-05	03-07-05

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2005-2006 Biennium

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CHECKS/LTC CHANGES.				
S0061	Scott Thomas	FELONY DEATH BY VEHICLE/SEX OFFENDER AMEND.	*H	Passed 2nd & 3rd Reading	05-26-05	07-28-05
[redacted]189	William R. Purce	ALL-TERRAIN VEHICLE REGULATION.	*HR	Ch. SL 2005-282	07-13-05	07-20-05
S0472	Scott Thomas	CHILD EXPLOITATION PREVENTION ACT.	*HR	Ch. SL 2005-121	04-11-05	05-03-05
S0492	Kay R. Hagan	JURY EXHIBITS.	*H	Re-ref Com On Judiciary III	04-20-05	05-09-05
S0527	Daniel G. Clodfe	CAMPUS POLICE ACT.	*HR	Ch. SL 2005-231	06-02-05	06-07-05
S0533	Philip E. Berger	CHILD'S ALLOWANCE FROM ESTATE.	*HR	Ch. SL 2005-225	04-04-05	07-12-05
S0666=	Fletcher L. Hart	PLANNED COMMUNITY ACT AMENDMENT.	*HR	Ch. SL 2005-214	04-21-05	06-30-05
S0667=	Fletcher L. Hart	SUBORDINATION AGREEMENT/REGISTRA. AMENDMENTS.	HR	Ch. SL 2005-212	04-21-05	06-30-05
S0671=	Fletcher L. Hart	REAL PROP. ELECTRONIC RECORDING/NOTARY ACT.	*HR	Ch. SL 2005-391	05-10-05	08-22-05
$ S0686	**Walter H. Dalton**	**METH. LAB PREVENTION ACT.**	***HA**	**Conf Report Adopted**	**05-03-05**	**07-25-05**
S0737=	Tony Rand	COUNTY GOV'T. CRIMINAL RECORDS CHECKS.	*HR	Ch. SL 2005-358	04-21-05	08-11-05
S1124=	Charles W. Alber	BREACH CONFID. FILES/ SCHOOL BD. EMPLOYEES.	*HR	Ch. SL 2005-321	07-27-05	08-04-05

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MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Thursday, March 3, 2005

The House Committee on Judiciary IV met on Thursday, March 3, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bill Culpepper, Beverly Earle, Bryan Holloway, Grier Martin, Earline Parmon and Karen Ray. Staff Counselors Dianna Jessup, Trina Griffin, Steve Rose and Jennifer McGinnis were also present. A Visitor Registration list is attached and made part of these minutes.

The chairman called the meeting to order and recognized Pages, Staff, Sergeants-at-Arms and visitors.

SB 41, CRIMINAL RECORDS CHECKS/LTC CHANGES, was introduced. The motion by Representative Martin to adopt the Proposed Committee Substitute for discussion passed. Senator Swindell, sponsor, was called on to explain the bill. Dianna Jessup, Staff Counsel, explained the technicalities of the bill.

Representative Culpepper sent forth an amendment to make a conforming change to Chapter 114-19.10. Upon motion, the amendment was adopted. Discussion followed.

Representative Glazier moved that the amendment be rolled into a committee substitute and a favorable report be given to the House Committee Substitute; unfavorable as to the Senate Committee Substitute. The motion was adopted.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Committee Report, Agenda, SB 41, Bill Analysis, Amendment, House Committee Substitute, Listing of Pages, Visitor Registration

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
S.B. 41 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

☐ 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 (#[redacted]1), ☒ 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

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, March 3, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS

Introductions, Judiciary IV Committee

SB 41 – CRIMINAL RECORD CHECKS/ LTC CHANGES
Senator A. B. Swindell, Sponsor

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 41*
Judiciary I Committee Substitute Adopted 2/23/05

Short Title: Criminal Record Checks/LTC Changes. (Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-80(a) reads as rewritten:

"(a) Definition. – As used in this section, ~~"area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.~~the term "providers" applies to area authority/county programs, and providers of mental health, developmental disability, and substance abuse services that are licensable under Article 2 of this Chapter."

SECTION 2. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by ~~an area authority~~ a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. ~~An area authority~~A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, ~~an area authority~~a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this

section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to the area authority the results of the national criminal history check.~~notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. ~~Area authorities~~Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of ~~an area authority~~a provider a State criminal history record check required by this section without the ~~area authority~~provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the ~~area authority.~~provider. All criminal history information received by the ~~area authority~~provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 3. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal

history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 4. G.S. 131D-40(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 5. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check

of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the national criminal history check.~~as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 6. G.S. 131E-265(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the

applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or home care agency ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

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

SENATE BILL 41:
Criminal Record Checks/LTC Changes

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Sen. Swindell
Date:	March 3, 2005	**Summary by:**	Dianna Jessup
Version:	S41-CSSW-8		Committee Counsel

SUMMARY: ***Senate Bill 41 is a recommendation of the North Carolina Study Commission on Aging. The bill would amend the law requiring criminal history background checks for employees of long-term care facilities to make clarifying changes to permit the FBI to share national criminal history information with the State for these purposes by restricting access to the information to the State agency and not permitting distribution of the information to private employers. The act would become effective when it becomes law.***

The PCS makes conforming changes to G.S. 122C-80.

CURRENT LAW: Current law, effective January 1, 2005, requires long-term care facilities to have criminal history background checks performed on all persons hired to work in long-term care facilities before making offers of permanent employment. Persons who have resided in the State for five or more years need only have a State criminal history check. For persons who have resided in the State for less than five years, a national criminal history check based on fingerprints is required from the FBI. Federal law restricts access to information contained in the national criminal history database generally to governmental entities. In these situations, federal law prohibits states from disclosing information obtained from the FBI to private individuals or entities. Because current law directs the Department of Health and Human Services (DHHS) to provide long-term care facility employers with the national criminal history check contrary to federal law, the FBI has refused to provide this information to the State.

BILL ANALYSIS: Sections 1, 3, 4, and 5 would modify the definition of "area authority" and make conforming changes in the mental health statutes to reflect that under mental health reform, area authorities have assumed an administrative role and are no longer providers of services themselves. Sections 2, 6, 7, 8 and 9 would modify the existing law to make it clear that DHHS will only indicate to an employer whether the criminal history record has information that might affect the applicant's employability under the statute. A copy of the relevant offenses used to determine a person's suitability for employment is attached. These changes would also make clear that the results of the national criminal history record check will not be shared with the employer. These statutes govern area mental health facilities, adult care homes, nursing homes and home care agencies.

BACKGROUND: The changes being proposed in the bill have been preapproved by the FBI as complying with the federal law and regulations governing the State's right to have access to the national criminal history record information.

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

Walker Reagan, Staff Attorney, Research Division, substantially contributed to this summary.

S41-SMSW-001

Relevant Criminal Offenses as used in G.S. 122C-80(e), 131D-40(d) and 131E-265(d):

"(e) Relevant Offense. -- As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These 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."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 41*

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

S41-ASW-3 [v.2]

Date _____,2005

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

Representative _____

moves to amend the bill on page 3, lines 20-21, by inserting between the lines the following:

"**SECTION 5.(a).** G.S. 114-19.10 reads as rewritten:

"**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and ~~area mental health, developmental disabilities, and substance abuse services authorities.~~providers of mental health, developmental disabilities, and substance abuse services.**

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.

(3) Home care agencies licensed under Chapter 131E of the General Statutes.

(4) ~~Area mental health, developmental disabilities, and substance abuse services authorities~~ Providers licensed under Chapter 122C of the General Statutes, including a contract agency of ~~an area authority~~ a provider that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to ~~area mental health, developmental disabilities, and substance abuse services authorities~~ a provider in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 41*

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

S41-ASW-3 [v.2]

additional information required by the Department of Justice, and a form signed by the individual 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 of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00).””.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 41*

Judiciary I Committee Substitute Adopted 2/23/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S41-CSSW-8 [v.2]

3/3/2005 8:58:55 AM

Short Title: Criminal Records Checks/LTC Changes. (Public)

Sponsors:

Referred to:

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE PROCEDURE FOR CONDUCTING NATIONAL CRIMINAL HISTORY RECORD CHECKS FOR LONG-TERM CARE FACILITIES TO CONFORM WITH FEDERAL REQUIREMENTS, AS RECOMMENDED BY THE NORTH CAROLINA STUDY COMMISSION ON AGING, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-80(a) reads as rewritten:

"(a) Definition. – As used in this section, ~~"area authority" means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.~~the term "provider" applies to an area authority/county program, and any provider of mental health, developmental disability, and substance abuse services that is licensable under Article 2 of this Chapter."

SECTION 2. G.S. 122C-80(b) reads as rewritten:

"(b) Requirement. – An offer of employment by ~~an area authority~~ a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. ~~An area authority~~A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of

employment, ~~an area authority~~a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to the area authority the results of the national criminal history check.~~notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. ~~Area authorities~~Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of ~~an area authority~~a provider a State criminal history record check required by this section without the ~~area authority~~provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the ~~area authority.~~provider. All criminal history information received by the ~~area authority~~provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section."

SECTION 3. G.S. 122C-80(c) reads as rewritten:

"(c) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the ~~area authority~~ provider shall consider all of the following factors in determining whether to hire the applicant:

(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 job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the ~~area authority.~~ provider. If the ~~area authority~~ provider disqualifies an applicant after consideration of the relevant factors, then the ~~area authority~~ provider may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant."

SECTION 4. G.S. 122C-80(d) reads as rewritten:

"(d) Limited Immunity. – ~~An area authority~~ A provider and an officer or employee of ~~an area authority~~ a provider that, in good faith, complies with this section shall be immune from civil liability for:

(1) The failure of the ~~area authority~~ provider to employ an individual on the basis of information provided in the criminal history record check of the individual.

(2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section."

SECTION 5. G.S. 122C-80(g) reads as rewritten:

"(g) Conditional Employment. – ~~An area authority~~ A provider may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The ~~area authority~~ provider shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The ~~area authority~~ provider shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment."

SECTION 6. G.S. 131D-40(a) reads as rewritten:

"(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal

history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 7. G.S. 131D-40(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the adult care home ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

SECTION 8. G.S. 131E-265(a) reads as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check

of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114.19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~Criminal Records Check Unit, shall ~~provide to~~ notify the nursing home or home care agency ~~the results of the national criminal history check.~~as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section."

SECTION 9. G.S. 131E-265(a1) reads as rewritten:

"(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the

applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, ~~Division of Facility Services.~~ Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, ~~Division of Facility Services,~~ Criminal Records Check Unit, shall ~~provide to~~ notify the contract agency of the nursing home or home care agency ~~the results of the national criminal history check.~~ as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

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

House Pages

1. Name: Candace Davis
   County: Columbus
   Sponsor: Hill
2. Name: _____
   County: _____
   Sponsor: _____
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Linda Fuller
2. Name: Bill Freeman
3. Name: _____
4. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — March 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flannery	NCHCPA
Jackie Sheppard	NCDHHS
Jesse Goodman	DHHS
Patricia A. Yancey	FRLTC
Ashby Ray	NC DOJ
Tim Rogers	Assoc. Home & Hospice Care
Fred Bone	Bone & Asso.
Lou Wilson	LTC
Jonny Cooper	NCALA
Evelyn Hall Horne	DHR
John McHugh	GOV OFFICE
Barbara Carden	BSCGR
Amy Jo Horne	NCMS

VISITOR REGISTRATION SHEET

JUDICIARY IV — March 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jack Cozort	Parker Poe
Cary McCall	POJ

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Thursday, March 17, 2005

The House Committee on Judiciary IV met on Thursday, March 17, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Earline Parmon and Karen Ray. Representative Jeff Barnhart, a primary sponsor of the bill being heard, was also present. Dianna Jessup, Trina Griffin, Jennifer McGinnis and Steve Rose, staff counselors, were present. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order with a moment of silence in memory of Representative John Hall, who died early this morning. The Chairman then introduced pages and Sergeants-at-Arms.

Representative Parmon moved to adopt the Proposed Committee Substitute for House Bill 451, ADOPTION/CRIM.CHECKS/PROSPECTIVE FAMILIES, for discussion. The motion was adopted. Vice-Chairman Glazier was called on to explain the Proposed Committee Substitute on the bill. Discussion followed. Ms. JoAnn Lamm, Division of Social Services, Department of Health and Human Services was recognized to answer questions on the bill. This bill makes changes to conform state statutes to Federal requirements. Representative Justus sent forth an amendment. Representative Kiser moved to adopt the amendment. The motion to amend was adopted.

Representative Glazier offered further changes in an amendment. After more discussion, Representative Daughtry moved to adopt the amendment to the Proposed Committee Substitute. The motion passed and the amendment was adopted.

The motion by Representative Glazier that the amendments be rolled in to a Committee Substitute, that there be a favorable report for the PCS, unfavorable to the original bill, was adopted.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Committee Report, Agenda, HB 451, Bill Analysis, Amendments, Committee Substitute, Federal Requirement Certification, G.S. 131D-10.3.A., Listing of Pages, Visitor Registration List.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 451 A BILL TO BE ENTITLED AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ANY INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES IN THE HOUSEHOLD OF A PROSPECTIVE ADOPTIVE PARENT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

X☐ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, March 17, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM

HB 451 – AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ANY INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES IN THE HOUSEHOLD OF A PROSPECTIVE ADOPTIVE PARENT.

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 451

Short Title:	Adoption/Crim. Checks/Prospective Families.	(Public)
Sponsors:	Representatives Glazier, Barnhart, Weiss (Primary Sponsors); Fisher, Gillespie, Insko, LaRoque, Luebke, McGee, Moore, and Pate.	
Referred to:	Judiciary IV.	

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ANY INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES IN THE HOUSEHOLD OF A PROSPECTIVE ADOPTIVE PARENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-3-309(a) reads as rewritten:

"(a) The Department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home are checked prior to placement and, based on the criminal history, a determination is made as to the individual's fitness to have responsibility for the safety and well-being of children. The Department shall ensure that all ~~prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services~~individuals required to be checked are checked prior to placement for county, state, and federal criminal histories."

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

HOUSE BILL 451:
Adoption/Crim. Checks/Prospective Families

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier, Barnhart, and Weiss
Date:	March 17, 2005		
Version:	H451-CSRI-1	**Summary by:**	Jennifer McGinnis Committee Counsel

SUMMARY: ***House Bill 451 would amend the law that requires criminal history background checks for prospective adoptive parents to also require checks for any individual eighteen years of age or older who resides in the household of a prospective adoptive parent. The changes proposed in the bill are required in order for the State to continue to be eligible to receive federal funds to support child welfare. The act would become effective when it becomes law.***

CURRENT LAW: Current law requires that the Department of Health and Human Services (Department) ensure that prospective adoptive parents are checked for county, State, and federal criminal histories prior to placement of a child in the prospective adoptive home in order to determine the person's fitness to have responsibility for the safety and well-being of a child. A copy of the relevant offenses used to determine a person's fitness to have responsibility for the safety and well-being of a child is attached.

Since 1996 State law has required that the Department ensure all foster parents, individuals applying for licensure as foster parents, **and individuals 18 years of age or older who reside in a family foster home**, are checked for county, State, and federal criminal histories.

BILL ANALYSIS: The bill would modify the existing law to also require a criminal history check for any individual eighteen years of age or older who resides in the household of a prospective adoptive parent.

BACKGROUND: The changes proposed in the bill are required in order for the State to continue to be eligible to receive federal funds under Title IV-B of the Social Security Act to support child welfare services. The federal Keeping Children and Families Safe Act enacted in 2003 amended the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) to require that in order to continue to be eligible for federal funds, that a state must certify that no later than June 25, 2005, it has implemented provisions and procedures for requiring criminal background checks for prospective foster and adoptive parents **and other adult relatives and non-relatives residing in the household**. Department staff reported that the following funds were allocated to the State in fiscal year 2003-2004 under Title IV-B and CAPTA: $8,577,519 under IV-B-1 (25% match required); $10,193,782 under IV-B-2 (25% match required); and $559,540 under CAPTA (no match required).

CHANGES IN PCS: The first edition of the bill amended 48-3-309(a) to require a criminal history check for any individual eighteen years of age or older who resides in the household of a prospective adoptive parent. The PCS makes conforming changes throughout the other subsections of 48-3-309, to G.S. 48-3-303 (d), and G.S. 114-19.7.

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

Relevant Criminal Offenses as included in G.S. 48-3-309:

"Criminal history" means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; 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; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

H451-CSRI-1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 451 DATE

S. B. No. Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) C. Justus
)
Sen.)

1 moves to amend the bill on page 1, line 26

2 ( ) WHICH CHANGES THE TITLE

3 by Striking through the word "may"

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5 and substituting the word "shall".

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SIGNED Carolyn Justus

ADOPTED FAILED TABLED

GA-33-A PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 451 DATE 3/17/05

S. B. No. _____ Amendment No. 2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Glazier
Sen.)

moves to amend the bill on page 5, line 8

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"SECTION 4. This act becomes effective June 24, 2005.";

and on page 2, line 35, by ~~deleting "fitness".~~ rewriting the line to read:

"being of children and whether other individuals required to be checked are fit for an adoptive";

and on page 4, line 28, by inserting "whether" between "to" and "other";

and on page 4, line 29, by deleting "fitness" and substituting "are fit".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Session 2005

FEDERAL REQUIREMENT CERTIFICATION

Authorized by G.S. 120-36.8

House Bill 451

Adoption/Crim. Checks/Prospective Families

Bill Primary Sponsor(s):	Glazier, Barnhart, Weiss	H451-CSRI-1
Relevant Federal Law:	*Keeping Children and Families Safe Act (P.L. 108-36)*	
☐ 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

House Bill 451 would amend the law that requires criminal history background checks for prospective adoptive parents to also require checks for any individual eighteen years of age or older who resides in the household of a prospective adoptive parent.

COMPLIANCE CONSIDERATIONS

The federal Keeping Children and Families Safe Act enacted in 2003 amended the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) to require that in order to continue to be eligible for federal funds to support child welfare, a state must certify that no later than June 25, 2005, it has implemented provisions and procedures for requiring criminal background checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household.

TECHNICAL OR MECHANICAL CONSIDERATIONS

REVIEW AND APPROVAL

Prepared By: _____ **Date:** _____

Name of Preparer
Title of Preparer

Approved By: _____ **Date:** _____

Terrence D. Sullivan
Director of Research

Preliminary

§ 131D-10.3A. Mandatory criminal checks.

(a) Effective January 1, 1996, in order to ensure the safety and well-being of any child placed for foster care in a home, the Department shall ensure that the criminal histories of all foster parents, individuals applying for licensure as foster parents, and individuals 18 years of age or older who reside in a family foster home, are checked and, based on the criminal history check, a determination is made as to whether the foster parents, and other individuals required to be checked, are fit for a foster child to reside with them in the home. The Department shall ensure that, as of the effective date of this Article, all individuals required to be checked are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all individuals who are required to be checked pursuant to subsection (a) of this section are checked upon relicensure for county and State criminal histories.

(c) The Department may prohibit an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that the safety and well-being of a child placed in the home for foster care would be at risk based on the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.

(d) The Department of Justice shall provide to the Department the criminal history of the individuals specified in subsection (a) of this section obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked, any additional information required by the Department of Justice, and a form 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 signed by the individual to be checked. The fingerprints of the individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

"NOTICE
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and

Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; 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; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have a foster child reside with you, you shall have the opportunity to complete or challenge the accuracy of the information contained in the SBI or FBI identification records.

If licensure is denied or the foster home license is revoked by the Department of Health and Human Services as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor."

Refusal to consent to a criminal history check is grounds for the Department to deny or revoke a license to provide foster care. Any person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and any person applying to be licensed as a foster parent, and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the criminal history of all individuals required to be checked. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of an individual's criminal history to the foster parent or any other individual required to be checked. The Department shall also notify the individual of the individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on individuals required by this section and shall charge the Department a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section. (1995, c. 507, s. 23.26(b); 1997-140, s. 2; 1997-443, ss. 11A.89, 11A.118(a); 2003-304, s. 4.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 451
PROPOSED COMMITTEE SUBSTITUTE H451-PCS80184-RI-1

Short Title: Adoption/Crim. Checks/Prospective Families. (Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ANY INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES IN THE HOUSEHOLD OF A PROSPECTIVE ADOPTIVE PARENT, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 48-3-309 reads as rewritten:

"**§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social ~~services.~~services and mandatory preplacement criminal checks of all individuals 18 years of age or older who reside in the prospective adoptive home.**

(a) The Department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home are checked prior to placement and, based on the criminal history, a determination is made as to ~~the individual's fitness to have responsibility for the safety and well-being of children.~~ the prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and whether other individuals required to be checked are fit for an adoptive child to reside with them in the home. The Department shall ensure that all ~~prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services~~individuals required to be checked are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services ~~may~~ shall issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services ~~determines~~ determines, pursuant to ~~G.S. 48-3-303(e)~~ G.S. 48-3-303(e),

~~that the individual is unfit to have responsibility for the safety and well-being of children based on the criminal history.~~ that, based on the criminal histories, the prospective adoptive parent is unfit to have responsibility for the safety and well-being of children or other individuals required to be checked are unfit for an adoptive child to reside with them in the home.

(c) The Department of Justice shall provide to the Department of Health and Human Services the criminal history of ~~such a prospective adoptive parent~~any individual required to be checked under subsection (a) of this section as requested by the Department and obtained from the State and National Repositories of Criminal ~~Histories as requested by the Department.~~Histories. The Department shall provide to the Department of Justice, along with the request, the fingerprints of ~~the prospective adoptive parent~~any individual to be checked, any additional information required by the Department of Justice, and a form 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 signed by the individual to be checked. The fingerprints of ~~the prospective adoptive parent~~any individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(d) At the time of the request for a preplacement assessment or at a subsequent time prior to placement, ~~a prospective adoptive parent~~any individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

"NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL ~~SERVICES.~~SERVICES AND ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

"Criminal history" means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon a prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and whether other individuals required to be checked are fit for an adoptive child to reside with them in the home, ~~an individual's fitness to have responsibility for the safety and well-being of children,~~ including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; 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; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well being of ~~children,~~children or have an adoptive child reside with you, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If ~~you are~~the prospective adoptive parent is denied a favorable preplacement assessment by a county department of social services as a result of ~~the~~ a criminal history ~~check,~~check as required under G.S. 48-3-309(a), ~~you~~ the prospective adoptive parent may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any ~~prospective adoptive parent~~person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor."

Refusal to consent to a criminal history check by any individual required to be checked under G.S. 48-3-309(a) is grounds for the issuance by a county department of social services of an unfavorable preplacement assessment. Any ~~prospective adoptive parent~~person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(e) The Department shall notify the prospective adoptive parent's supervising county department of social services of the results of the criminal history ~~check in~~check. In accordance with the federal and State law regulating the dissemination of the contents of the criminal history ~~file. The~~file, the Department shall not release ~~nor~~ or disclose any portion of ~~the prospective adoptive parent's~~an individual's criminal history to the ~~prospective adoptive parent.~~prospective adoptive parent or any other individual required to be checked. The ~~Department~~ Department, however, shall ~~also~~ ensure that the ~~prospective adoptive parent~~ prospective adoptive parent or any other individual required to be checked is notified of the ~~prospective adoptive parent's~~individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the prospective adoptive parent's right to contest the preplacement assessment of the county department of social services.

A prospective adoptive parent who disagrees with the preplacement assessment of the county department of social services may request a review of the assessment pursuant to G.S. 48-3-308(a).

(f) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There is no liability for negligence on the part of a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(h) The Department of Justice shall perform the State and national criminal history checks on prospective adoptive parents seeking to adopt a minor in the custody or placement responsibility of a county department of social services and all individuals 18 years of age or older who reside in the prospective adoptive home and shall charge the Department of Health and Human Services a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of implementing this section."

SECTION 2. G.S. 48-3-303(d) reads as rewritten:

"(d) The agency shall conduct an investigation for any criminal record as permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, a county department of social services shall have the ~~individual's~~ prospective adoptive parent's criminal history and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home investigated pursuant to G.S. 48-3-309, and based on the criminal history, make a determination ~~pursuant to subsection (e) of this section as to the individual's fitness to have responsibility for the safety and well-being of children.~~ as to the prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and as to whether other individuals required to be checked are fit for an adoptive child to reside with them in the home."

SECTION 3. G.S. 114-19.7 reads as rewritten:

"**§ 114-19.7. Criminal record checks required prior to placement ~~of prospective adoptive parents seeking to adopt~~ for adoption of a minor who is in the custody or placement responsibility of a county department of social services.**

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of ~~the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services,~~any individual to be checked, any additional information required by the Department of Justice, and a form 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 signed by the individual to be checked. The fingerprints of the ~~prospective adoptive parent~~individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

SECTION 4. This act becomes effective June 24, 2005.

House Pages

Name Of Committee: JDIV Date: 03/17/05

1. Name: Danielle Carr
   County: Wake
   Sponsor: Speaker
2. Name: Patrick Britt
   County: Wake
   Sponsor: Weiss
3. Name: Annie Land
   County: Nash
   Sponsor: Black
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Brad Barefoot
2. Name: Jim Womack
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

HOUSE COMMITTEE ON JUDICIARY IV — MARCH 17, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Z. Sinha	N.C.A.G's Office for Div of Soc. Srvc
Jane Smith	NC DHHS/DSS
Rob Hamme	NC DHHS
JoAnn Lam	NCDHHS
Sherry McDowell	NCGA Intern

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Thursday, March 24, 2005

The House Committee on Judiciary IV met on Thursday, March 24, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon and Karen Ray. Representatives Phil Haire and Joe Tolson, primary sponsors of bills on the agenda, were also present. Trina Griffin, Jennifer McGinnis and Steve Rose, staff counselors were present. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order and introduced pages and Sergeants-at-Arms.

House Bill 650 – BUSINESS COURT CASES/FEE was the first bill on the agenda. Motion made by Representative Glazier to adopt the Proposed Committee Substitute for discussion was adopted. Representative Haire, a primary sponsor, spoke on the bill. Discussion followed with questions by the committee members being answered by Mr. Greg Stahl, Administrative Office of the Courts. Representative Kiser sent forth an amendment to the bill. Representative Glazier moved that the amendment be rolled into the committee substitute, that there be a favorable report on the committee substitute, unfavorable to the original bill, with a recommendation that the committee substitute be re-referred to the Committee on Finance. The motion was adopted.

A committee substitute was offered for the next bill, House Bill 634 – JUDICIAL DEPT. CRIMINAL BACKGROUND CHECKS.-AB. Representative Parmon moved to adopt the committee substitute for discussion purposes; the motion was adopted. Representative Tolson, primary sponsor of House Bill 634 spoke on the bill. Steve Rose, Committee counsel, was called on to explain the bill. Discussion followed with Greg Stahl and Pamela Best, both from the Administrative Office of the Courts, answering questions from members of the committee. Representative Kiser moved to adopt the committee substitute with a favorable report, unfavorable to the original bill, with a recommendation that the committee substitute be re-referred to the Committee on Finance. The motion was adopted.

There being no further business, Chairman Weiss adjourned the meeting.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 634: Committee Report, Copy of Bill, Bill Analysis, Committee Substitute; HB 650: Committee Report, Copy of Bill, Bill Analysis, Amendment, Committee Substitute; Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, March 24, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS

HB 634 – JUDICIAL DEPT. CRIMINAL BACKGROUND CHECKS
Representative Tolson, Sponsor

HB 650 – BUSINESS COURT CASES/FEE
Representatives Haire and Glazier, Sponsors

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 634 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES.

☐ 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 Finance

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 634

Short Title:	Judicial Dept. Criminal Background Checks.-AB	(Public)
Sponsors:	Representative Tolson.	
Referred to:	Judiciary IV.	

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"**§ 114-19.14. Criminal record checks for the Judicial Department.**

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the current or prospective employee, volunteer, or contractor shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.**

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.14, and may dismiss a current employee, terminate a contractor, or terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.14."

SECTION 2. This act becomes effective October 1, 2005.

HB 634:
Judicial Dept. Criminal Background Checks

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Tolson
Date:	March 24, 2005	**Summary by:**	Steven Rose
Version:	PCS H634-CSRL-4[v.1]		Committee Counsel

SUMMARY: HB 634 authorizes the Dept. of Justice to do criminal background checks for the Judicial Dept. It also provides that the Judicial Dept. may refuse employment, a contract, or a volunteer opportunity, or terminate any such relationship, if a person refuses to consent to a criminal background check.

BILL ANALYSIS: Section One of the bill authorizes to Dept. of Justice to do criminal background checks for the Judicial Dept. on any current or prospective employee, contractor, or volunteer. The Judicial Dept. must provide a consent form signed by the person to be checked that authorizes the check to be done and their fingerprints to be used. The Judicial Dept. also must provide a set of fingerprints and any other required identifying information. The Dept. of Justice may charge a fee that does not exceed actual cost.

Section Two provides that the Judicial Dept. may refuse employment, a contract, or a volunteer opportunity to anyone who does not consent to the check. It may terminate an existing employment, contract, or volunteer relationship if the person refuses to consent to a background check.

The act is effective October 1, 2005.

BACKGROUND: The General Assembly has granted similar authority for background checks to be done for other agencies and municipalities.

H634-smrl-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 634
PROPOSED COMMITTEE SUBSTITUTE H634-CSRL-4 [v.1]

3/23/2005 2:48:47 PM

Short Title: Judicial Dept. Criminal Background Checks.-AB (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF JUSTICE TO PROVIDE THE JUDICIAL DEPARTMENT WITH CRIMINAL BACKGROUND CHECKS FROM THE STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORIES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 114 is amended by adding a new section to read:

"**§ 114-19.16. Criminal record checks for the Judicial Department.**

(a) The Department of Justice may provide to the Judicial Department from the State and National Repositories of Criminal Histories the criminal history of any current or prospective employee, volunteer, or contractor of the Judicial Department. The Judicial Department shall provide to the Department of Justice, along with the request, the fingerprints of the current or prospective employee, volunteer, or contractor, a form signed by the current or prospective employee, volunteer, or contractor consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The fingerprints of the current or prospective employee, volunteer, or contractor shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Judicial Department shall keep all information obtained pursuant to this section confidential.

(b) The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 29 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"**§ 7A-349. Criminal history record check; denial of employment, contract, or volunteer opportunity.**

The Judicial Department may deny employment, a contract, or a volunteer opportunity to any person who refuses to consent to a criminal history check authorized under G.S. 114-19.16, and may dismiss a current employee, terminate a contractor, or terminate a volunteer relationship if that employee, contractor, or volunteer refuses to consent to a criminal history record check authorized under G.S. 114-19.16."

SECTION 2. This act becomes effective October 1, 2005.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 650 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES AND TO AUTHORIZE A LARGER FEE FOR THOSE 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, unfavorable as to the original bill, and recommendation that the committee substitute be re-referred to the Committee on Finance..

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 650*

Short Title:	Business Court Cases/Fee.	(Public)
Sponsors:	Representatives Haire, Glazier (Primary Sponsors); and Faison.	
Referred to:	Judiciary IV, if favorable, Finance.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES AND TO AUTHORIZE A LARGER FEE FOR THOSE CASES.

The General Assembly of North Carolina enacts:

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

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice."

SECTION 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court except that if a case is assigned to a special superior court judge as a complex business case under G.S. 7A-45.3 the sum shall be two hundred sixty-nine dollars

($269.00), and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19."

SECTION 3. This act becomes effective January 1, 2006, and applies to fees assessed or collected on or after that date.

HOUSE BILL 650:
Business Court Cases/Fees.

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Haire and Glazier
Date:	March 24, 2005	**Summary by:**	Trina Griffin
Version:	PCS for 1st Edition H650-CSSVf-5		Committee Counsel

SUMMARY: ***House Bill 650 authorizes the Chief Justice of the North Carolina Supreme Court to assign special superior court judges to hear complex business cases, which is a recommendation of the Chief Justice's Commission on the Future of the North Carolina Business Court. It also increases the filing fee for those cases from $69 to $269. The bill would become effective January 1, 2006, and apply to fees assessed or collected on or after that date.***

CURRENT LAW: The North Carolina Business Court is a specialized forum of the North Carolina State Courts' trial division. A senior resident superior court judge, chief district court judge, or presiding superior court judge may, on his own motion or on motion of a party, recommend to the Chief Justice that a case or cases be designated as a complex business case. The Chief Justice may designate any case, or group of cases, as complex business and assign the case to a superior court judge who oversees resolution of all matters in the case through trial. The process for appeals from a decision of the Special Superior Court Judge for Complex Business Cases is the same as the process for appeals from other superior court orders and judgments.

The term "complex business case" is not defined by rule or statute, but one of the key factors in assessing whether a case should be designated as a complex business case is whether the outcome will have implications for business and industry beyond the conflicts of the parties to the litigation. If a written decision on disposition of the case would provide predictability for others in the same business or industry in making their business decisions, the case will more likely be considered for designation.

There are also other procedural indicators of complex business cases. The cases may be time sensitive, paper intensive, or laden with discovery disputes. They may have complex legal and evidentiary issues, multiple parties and jurisdictions, and have a significant impact on the parties' business, whether it is from a monetary or a corporate governance standpoint.

At present, there is only one judge and one geographic location for the court. The Chief Justice's Commission on the Future of the North Carolina Business Court, which issued its most recent report in December 2004, has recommended that, in order to meet the challenges of an increasing caseload and to remain competitive in attracting new business, the court should, among other things, be expanded into both Wake and Mecklenburg Counties as well as make technological and administrative improvements.

BILL ANALYSIS: House Bill 650 does two things:

- ***Assignment of Special Judges.*** – It provides for the Chief Justice of the North Carolina Supreme Court to assign special superior court judges to complex business cases. This provision is essentially a codification of Rule 2.2 of the Superior Court Rules of Practice, which currently provides that the Chief Justice shall designate one or more superior court judges as special judges to hear and decide complex business cases. These judges are known as a "Special Superior Court Judge for Complex Business Cases." The bill provides that the Chief Justice may designate one or more special superior

court judges authorized by G.S. 7A-45.1 to hear complex business cases. "Special judges" under G.S. 7A-45.1 are judges appointed by the Governor who are not resident judges of any particular district, but serve around the State as needed. At present, there are 12 such special judges. This provision tightens the language of Rule 2.2 to both reflect the current, accepted understanding of Rule 2.2 and to explicitly recognize and confirm, by statute, the concept of special business court judges deciding cases in the business court.

- ***Increased Filing Fee.*** – It increases the filing fee for complex business cases from $69 to $269. Currently, the cost for filing a civil case in superior court is $69. This bill would require an additional $200 fee for cases referred to business court. The purpose of the fee is to fund both geographic expansion and technological advancements for the business court. **The PCS clarifies that the additional $200 is not to be paid until the case has actually been assigned to business court.**

BACKGROUND: The North Carolina Commission on Business Laws and the Economy (NCCBLE) was established by Governor Hunt in April 1994 and charged with recommending "any needed changes in existing statutes and regulations which affect the operation of businesses in North Carolina."

With particular focus given to Chapter 55 of the North Carolina General Statutes, the NCCBLE was to recommend any needed new statutes, rules, and regulations designed to assure that North Carolina offers a legal environment providing the flexibility and support to allow businesses to operate successfully in this state and to attract businesses to locate and incorporate here. In January of 1995, the NCCBLE recommended, among other things, that North Carolina establish a business court in order to make the court system both responsive and predictable in dealing with complex corporate issues.

To meet those specifications, the Commission recommended that the North Carolina Supreme Court amend Rule 2.1 to allow the Chief Justice to designate certain cases as complex business cases, and adopt Rule 2.2 to allow the Chief Justice to designate one or more superior court judges to hear those special cases. Any judge so designated would be known as a Special Superior Court Judge for Complex Business Cases and would be required to write opinions in designated cases. The Commission recommended that the Governor appoint at least one expert in corporate law to be designated by the Chief Justice to hear complex business cases.

In creating a business court, North Carolina has joined other states in recognizing the need for specialization in complex business litigation. The American Bar Association has recommended that all states adopt some form of business court. The great burden placed upon state and federal judges by increasing criminal caseloads, combined with a growing need for fast answers in complex business disputes in today's rapidly moving commercial environment, make such courts a necessity for business and industry.

In November 2003, the North Carolina Supreme Court created the Chief Justice's Commission on the Future of the North Carolina Business Court. By order of the court, the Commission was directed to study the functions and procedures of the North Carolina Business Court and compare them to those of other business courts. The Commission was directed to report its findings and issue recommendations to the Chief Justice and to the North Carolina Judicial Council by December 31, 2004.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 650 DATE 3/24/05

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

COMMITTEE SUBSTITUTE ✓

(Rep.) Kiser

Sen.)

moves to amend the bill on page 2, line 11

( ) WHICH CHANGES THE TITLE

by adding the following after the period:

" The additional two hundred dollar ($200) fee for cases assigned to a special superior court judge as a complex business case shall be deposited into a special fund within the State Treasurer's office to defray the costs of operating the business court. Interest earned on the fund shall remain in the fund."

SIGNED Joe Kiser

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 650*
PROPOSED COMMITTEE SUBSTITUTE H650-PCS50242-SVf-5

Short Title: Business Court Cases/Fee. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE ASSIGNMENT OF SPECIAL SUPERIOR COURT JUDGES TO HEAR COMPLEX BUSINESS CASES AND TO AUTHORIZE A LARGER FEE FOR THOSE CASES.

The General Assembly of North Carolina enacts:

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

"**§ 7A-45.3. Superior court judges designated for complex business cases.**

The Chief Justice may exercise the authority under rules of practice prescribed pursuant to G.S. 7A-34 to designate one or more of the special superior court judges authorized by G.S. 7A-45.1 to hear and decide complex business cases as prescribed by the rules of practice."

SECTION 2. G.S. 7A-305(a) reads as rewritten:

"(a) In every civil action in the superior or district court, except for actions brought under Chapter 50B of the General Statutes, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of twelve dollars ($12.00) in cases heard before a magistrate, and the sum of sixteen dollars ($16.00) in district and superior court, to be remitted to the county in which the judgment is rendered, except that in all cases in which the judgment is rendered in facilities provided by a municipality, the facilities fee shall be paid to the municipality. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of sixty-nine dollars ($69.00) in the superior ~~court,~~court, except that if a case is assigned to a special superior court judge as a complex business case

under G.S. 7A-45.3, an additional two hundred dollars ($200.00) shall be paid upon its assignment, and the sum of fifty-four dollars ($54.00) in the district court except that if the case is assigned to a magistrate the sum shall be forty-three dollars ($43.00). Sums collected under this subdivision shall be remitted to the State Treasurer. The State Treasurer shall remit the sum of one dollar and five cents ($1.05) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.4, and ninety-five cents ($.95) of each fee collected under this subdivision to the North Carolina State Bar for the provision of services described in G.S. 7A-474.19. The additional two hundred dollars ($200.00) for cases assigned to a special superior court judge as a complex business case shall be deposited into a special fund, held in the State Treasurer's office, to defray the costs of operating the business court. Interest earned on the fund shall remain in the fund."

SECTION 3. This act becomes effective January 1, 2006, and applies to fees assessed or collected on or after that date.

House Pages

Name Of Committee: Jud. IV Date: March 24, 05

Room 415

1. Name: Kylie Mason
   County: Wake
   Sponsor: Rep. Dollar
2. Name: Ben Azevedo
   County: Wake
   Sponsor: Rep. Dollar
3. Name: Christopher Craven
   County: Iredell
   Sponsor: Rep. Ray
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Earl Cokes
2. Name: Bill Sullivan
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — March 24, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Caitlan Arrowood	NC Business Court Commission
[signature]	AOC
Pamela Bart	U
Brad Lamb	NC Consumers Council
Greg McLeod	NC AOC
Ralph Walker	AOC

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, March 29, 2005

The House Committee on Judiciary IV met on Tuesday, March 29, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon and Karen Ray. Trina Griffin, Dianna Jessup, Jennifer McGinnis and Steve Rose, staff counselors were present. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order and introduced pages and Sergeants-at-Arms.

Representative Glazier, a primary sponsor of House Bill 277, ESTABLISH CHILD ASSESSMENT RESPONSES, moved to adopt the Proposed Committee Substitute for discussion purposes. The motion was adopted. He then spoke on the bill. Dianna Jessup, staff counsel, explained the substantive changes in the bill. Ms. JoAnn Lamm, Division of Social Services of the Department of Health and Human Services, answered questions asked by the committee members on the Multiple Response System. Ms. Denise Boyette, with Child Protective Services in Johnston County, was present and commented on the positive changes they have seen in families since Johnston County has adopted the Multiple Response System. A handout on the Multiple Response System is attached and made part of these minutes. Representative Glazier moved the committee substitute receive a favorable report, unfavorable to the original bill. The motion was adopted.

There being no further business, the meeting was adjourned at 10:25 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Committee Report, Agenda, HB 277, Bill Analysis, Handout on Multiple Response System, Committee Substitute, Listing of Pages, Visitor Registration.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 277 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR FAMILY ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE NEGLECTED OR DEPENDENT AND FOR INVESTIGATIVE ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE ABUSED.

☐ 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

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, March 29, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM

HB 277 – AN ACT TO PROVIDE FOR FAMILY ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE NEGLECTED OR DEPENDENT AND FOR INVESTIGATIVE ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE ABUSED.

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 277*

Short Title:	Establish Child Assessment Responses.	(Public)
Sponsors:	Representatives Glazier, Alexander, Carney (Primary Sponsors); B. Allen and Insko.	
Referred to:	Judiciary IV.	

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FAMILY ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE NEGLECTED OR DEPENDENT AND FOR INVESTIGATIVE ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE ABUSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in ~~G.S. 14-178 and G.S. 14-179;~~ G.S. 14-178; preparation of obscene photographs,

slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in ~~G.S. 14-202.1, regardless of the age of the parties;~~ G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances. – Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk. – Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Community-based program. – A program providing nonresidential or residential treatment to a juvenile in the community where the

juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(6) Court. – The district court division of the General Court of Justice.

(7) Court of competent jurisdiction. – A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) "Criminal history" means a local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(9) Dependent juvenile. – A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director. – The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District. – Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. – A response to reports of child neglect and dependency utilizing a family centered approach that is protection and prevention oriented and that evaluates the family's strengths and needs, as well as the condition of the juvenile.

(11b) Investigative assessment response. – A response to reports of child abuse and selected reports of child neglect and dependency using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge. – Any district court judge.

(13) Judicial district. – Any district court district as established by G.S. 7A-133.

(14) Juvenile. – A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(15) Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected

juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner. – The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor. – The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts. – The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(19) Safe home. – A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(20) Shelter care. – The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

SECTION 2. G.S. 7B-300 reads as rewritten:

"**§ 7B-300. Protective services.**

The director of the department of social services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the ~~investigation and~~ screening of ~~complaints,~~ reports, assessments using either a family assessment response or an investigative assessment response, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to child care facilities as defined in G.S. 110-86."

SECTION 3. G.S. 7B-301 reads as rewritten:

"**§ 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.**

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is

known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's ~~investigation~~ assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the director shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the ~~investigation~~ assessment there is reason to suspect that sexual abuse has occurred, the director shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report."

SECTION 4. G.S. 7B-302 reads as rewritten:

"**§ 7B-302. ~~Investigation~~ Assessment by director; access to confidential information; notification of person making the report.**

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough ~~investigation~~ assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the ~~investigation.~~ assessment. When the report alleges neglect or dependency, the director shall initiate the ~~investigation~~ assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an investigation, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The ~~investigation~~ assessment and evaluation shall include a visit to the place where the juvenile ~~resides.~~ resides and an inquiry into the identity of and contact information for the juvenile's extended maternal and paternal family, except when a report involves a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When the report alleges abandonment, the investigation shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an ~~investigation~~ assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the ~~investigation~~ assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the ~~investigation~~ assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the ~~investigation~~ assessment of the ~~complaint~~ report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the ~~investigation~~ assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the ~~investigation of or the provision for~~ assessment or provision of protective services. Upon the director's or the director's representative's

request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for ~~investigation~~ assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services ~~investigation,~~ assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for ~~investigation~~ assessment purposes without at least one of the following:

(1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.

(2) The permission of the parent or person responsible for the juvenile's care.

(3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.

(4) An order from a court of competent jurisdiction."

SECTION 5. G.S. 7B-303 reads as rewritten:

"**§ 7B-303. Interference with ~~investigation.~~ assessment.**

(a) If any person obstructs or interferes with an ~~investigation~~ assessment required by G.S. 7B-302, the director may file a petition naming ~~said~~ that person as respondent and requesting an order directing the respondent to cease such obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the ~~investigation,~~ assessment; shall describe the basis for the director's reasonable belief that a juvenile may be abused, neglected, or dependent; shall specifically describe the conduct alleged to constitute obstruction of or interference with the ~~investigation,~~ assessment; and shall be verified.

(b) For purposes of this section, obstruction of or interference with an ~~investigation~~ assessment means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B-302, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out the duty to ~~investigate.~~ assess the juvenile's condition.

(c) Upon filing of the petition, the court shall schedule a hearing to be held not less than five days after service of the petition and summons on the respondent. Service of the petition and summons and notice of hearing shall be made as provided by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court to be a necessary party. If at the hearing on the petition the court finds by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an ~~investigation~~ assessment required by G.S. 7B-302, the court may order the respondent to cease such obstruction or interference. The burden of proof shall be on the petitioner.

(d) If the director has reason to believe that the juvenile is in need of immediate protection or assistance, the director shall so allege in the petition and may seek an ex parte order from the court. If the court, from the verified petition and any inquiry the court makes of the director, finds probable cause to believe both that the juvenile is at risk of immediate harm and that the respondent is obstructing or interfering with the director's ability to ~~investigate to determine~~ assess the juvenile's condition, the court may enter an ex parte order directing the respondent to cease such obstruction or interference. The order shall be limited to provisions necessary to enable the director to conduct an ~~investigation~~ assessment sufficient to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days after the entry of an ex parte order under this subsection, a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order. An order entered under this subsection shall be served on the respondent along with a copy of the petition, summons, and notice of hearing.

(e) The director may be required at a hearing under this section to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency as required by G.S. 7B-301.

(f) An order entered pursuant to this section is enforceable by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

SECTION 6. G.S. 7B-305 reads as rewritten:

"**§ 7B-305. Request for review by prosecutor.**

The person making the report shall have five working days, from receipt of the decision of the director of the department of social services not to petition the court, to notify the prosecutor that the person is requesting a review. The prosecutor shall notify the person making the report and the director of the time and place for the review, and the director shall immediately transmit to the prosecutor a copy of ~~the investigation report.~~ a summary of the assessment."

SECTION 7. G.S. 7B-307 reads as rewritten:

"**§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services and State Bureau of Investigation.**

(a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services ~~investigation~~ assessment being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

(b) If the director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7B-101 in a child care facility, the director shall immediately so notify the Department of Health and Human Services and, in the case of sexual abuse, the State Bureau of Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the records of the department of social services.

(c) Upon completion of the ~~investigation,~~ assessment, the director shall give the Department written notification of the results of the ~~investigation~~ assessment required by G.S. 7B-302. Upon completion of an ~~investigation~~ assessment of sexual abuse in a child care facility, the director shall also make written notification of the results of the ~~investigation~~ assessment to the State Bureau of Investigation.

The director of the department of social services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission."

SECTION 8. G.S. 7B-308(b) reads as rewritten:

"(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or that person's designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an ~~investigation~~ assessment of the case.

(1) If the ~~investigation~~ assessment reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress or to prevent the juvenile from suffering serious physical injury, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian, or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct the ~~investigation~~ assessment and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator, or that person's designee may ask the prosecutor to review this decision according to the provisions of G.S. 7B-305 and G.S. 7B-306."

SECTION 9. G.S. 7B-309 reads as rewritten:

"**§ 7B-309. Immunity of persons reporting and cooperating in an ~~investigation.~~ assessment.**

Anyone who makes a report pursuant to this Article, cooperates with the county department of social services in a protective services ~~inquiry or investigation,~~ assessment, testifies in any judicial proceeding resulting from a protective services report or ~~investigation,~~ assessment, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed."

SECTION 10. G.S. 7B-404(a) reads as rewritten:

"(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent, or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an ~~investigation~~ assessment required by G.S. 7B-302."

SECTION 11. G.S. 7B-506(h)(3) reads as rewritten:

"(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the ~~investigation~~ assessment conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

SECTION 12. G.S. 108A-14(a)(11) reads as rewritten:

"**§ 108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

...

(11) To ~~investigate~~ assess reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes;".

SECTION 13. This act becomes effective October 1, 2005.

HOUSE BILL 277:
Establish Child Assessment Responses

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier, Alexander, and Carney
Date:	March 22, 2005		
Version:	PCS H277-CSSW-7	**Summary by:**	Dianna Jessup Committee Counsel

SUMMARY: ***House Bill 277 would authorize counties to utilize an alternative response system (known as the Multiple Response System, or MRS) to assess reports of child abuse, neglect, and abandonment, currently being piloted in 52 counties, and would require a continued assessment of MRS. The bill would permit local departments of social services to determine whether to visit the home of a juvenile if a report involves alleged abuse or neglect in a child care facility, and would codify language from case law to require a statement of the basis for initiating an assessment of a report of abuse or neglect in an interference petition. The act would become effective October 1, 2005.***

CURRENT LAW AND BACKGROUND: Local departments of social services (DSS) are responsible for establishing child protective services to investigate and screen reports of child abuse, neglect, and abandonment. When a report of abuse, neglect, or dependency is received, the director of the local DSS is required to initiate an investigation to ascertain the facts, the extent of the abuse or neglect, and the risk of harm in order to determine whether protective services should be provided. If any person obstructs or interferes with an investigation, DSS may petition the court for an order directing the person to cease with the obstruction or interference. If the director of DSS finds evidence that a child has been abused, neglected, or abandoned, the director may commence a civil action in juvenile court.

In 2001, the General Assembly authorized the Department of Health and Human Services (DHHS) to develop a plan, working with local DSS, to implement an alternative response system of child protection in no fewer than two and no more than 10 demonstration areas. The legislation required DHHS to develop data collection processes to enable the General Assembly to assess the impact of these pilots. In 2003, this pilot program was expanded. Currently, 52 counties utilize this alternative system, known as the Multiple Response System (MRS).[1]

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[1] According to the State's Division of Social Services, MRS utilizes seven strategies for providing child protective services:

- A strengths-based, structured intake process, utilizing objective, structured intake tools and consistent screening criteria to identify abuse, neglect, and dependency, and includes an assessment of the family's strengths.
- A choice of two approaches to reports of abuse, neglect, or dependency, allowing social workers to distinguish between cases of child neglect and dependency and those of abuse.
- Coordination between law enforcement agencies and child protective services.
- A redesign of in-home services to provide families with the greatest needs with the most intensive services and contacts while families with fewer needs are provided with less intensive assistance.
- Child and Family Team meetings to allow families to be involved with social services staff in making decisions about ways to improve the lives of the family's children.
- Implementation of Shared-Parenting meetings in child placement cases to allow the social worker, birthparents, and foster parents to meet and discuss the care of the child when out-of-home placement is necessary.
- Collaboration between Work First Family Assistance and child welfare programs.

In MRS pilot counties, when a report of abuse, neglect, or abandonment is received, depending upon the nature of the report, DSS performs an assessment using either a family assessment response or an investigative assessment response. When abuse is alleged, and in some cases of neglect or abandonment, MRS pilot counties utilize a formal information gathering process, much like a traditional investigation that non-MRS counties undertake upon the receipt of any report. In other cases, MRS counties assess reports utilizing a family assessment response, which is less formal and evaluates the strengths and needs of the juvenile's family.

Duke University's Center for Child and Family Policy has been evaluating MRS, has submitted a report to the General Assembly on April 1, 2004, and is expected to submit a second report in June. In its April 2004 report, the Center made the following recommendations based upon the findings of the report and feedback received through the focus groups in the nine counties visited:

1. Limit caseload size to 6 –8 families per worker or implement a "team model" with teams consisting of investigators/assessors, case managers, and foster care workers that act as a cohesive unit to serve a family.
2. Implement additional and consistent training for line staff.
3. Implement supervisory and management training immediately.
4. Appropriate state dollars to conduct crossagency family-centered training for all child-serving agencies.
5. Create a new decision category to address those instances when families receive services during assessment period and do not need additional supervision beyond this time, called "services received, no further services recommended."
6. Conduct a more systematic and detailed evaluation when MRS has been in practice for a longer period of time.
7. Evaluate the next wave of implementation immediately.

BILL ANALYSIS: House Bill 277 would amend the juvenile law to permit all counties to utilize the MRS approach to assessing reports of child abuse, neglect, and abandonment.

Section 1 would add the definitions of "family assessment response" and "investigative assessment response". The section would also delete an outdated statutory reference and would apply the ages of the parties in the indecent liberties statute in determining whether abuse may have occurred.

Section 2 would amend current law to specify that protective services would include the performance of either a family assessment response or an investigative response.

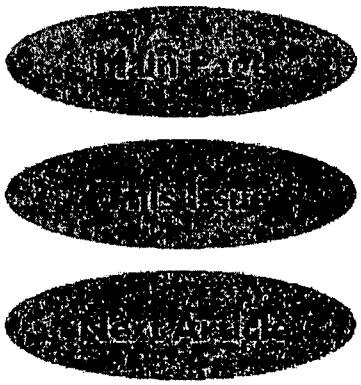
Sections 3 through 12 would make conforming changes to the juvenile code, specifically by changing the word "investigation" to "assessment" where applicable.

Section 4 would permit DSS to determine whether a visit to the place where the juvenile resides is necessary when the report alleges abuse or neglect in a child care facility.

Section 5 would amend the law concerning interference with an investigation to require DSS to include in a petition a concise statement of the basis for initiating the assessment. This is consistent with the North Carolina Supreme court's opinion in In re Stumbo, 357 N.C. 279 (2003), where the court held that "before any investigation is initiated or interference with any such investigation ensues, the proper inquiry that must be made by DSS is whether an investigation is mandated based upon the first report or multiple reports that show a pattern of neglect."

Section 13 would require the Department of Health and Human Services to continue to assess MRS and report the status of its evaluation to the Legislative Study Commission on Children and Youth, the HHS appropriations subcommittees and Fiscal Research prior to the convening of the short session.

H277-SMSW-001



Children's Services
PRACTICE NOTES
From the N.C. Division of Social Services and the Family and Children's Resource Program

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North Carolina Adopts New Approach to Child Protective Services: Multiple Response

Multiple response, North Carolina's new approach to child protective services, allows for more than one response to initial reports of child maltreatment. Several states, including Missouri, Minnesota, South Carolina, Virginia, Louisiana, Florida, Washington, and Michigan, have implemented and tested multiple response systems, which have also been called "dual track," "multiple track," "assessment track," or "alternative response." These approaches recognize that reports of abuse or neglect vary a great deal and that, because of this, one approach cannot meet the needs of every family.

Without expanding existing state definitions of abuse or neglect, multiple response allows child protective services (CPS) workers to assist some families without a formal determination of abuse or neglect.

Pilot Counties

In North Carolina, 10 counties will pilot the multiple response system: Alamance, Bladen, Buncombe, Caldwell, Craven, Franklin, Guilford, Mecklenberg, Nash, and Transylvania. In fact, Caldwell and Alamance county representatives have traveled to Minnesota to see similar multiple response systems. North Carolina also brought in professionals from other states to train N.C. Division of Social Services staff and workers from pilot counties.

From what they have seen and learned so far, local staff and

administrators are excited about the new approach to CPS. "I makes so much sense," says Susan Osborne, director of Alamanc County DSS. "When you go to the doctor and he tells you that yo have a tumor, you undergo surgery. But if you have a cold, th doctor would prescribe a different treatment. We were offering on solution for all problems. Many things contribute to neglect o abuse—sometimes it's a resource issue or poor decision-making It's not always criminal child abuse."

Multiple Response

Although multiple response varies from state to state in it implementation, usually there are at least two categories o response to reports. The first category includes reports that ar immediately recognized as presenting serious safety issues fo children and/or potential criminal charges against the allege perpetrator. These reports go on the ***investigation track***. Th second category of reports includes situations in which there ar needs that, if addressed, could stabilize the family and enable th parents to better care for their children. These reports go on th ***assessment track***. When and how that happens varies across th country, but this two-tiered approach is what distinguishe multiple response from traditional CPS services.

In North Carolina, the new structured decision-making tools implemented in April, will help CPS workers determine how t respond to families. Under the old "family risk assessment' instrument, workers had to make a decision about whether t substantiate first, then they would complete a risk assessment With the new tools, workers complete a variety of assessments *wit the family* before making a decision, according to the N.C. Divisio of Social Services' Connie Polk. The new tools include a safet assessment, risk assessment, case decision summary/initial cas plan, risk reassessment, case summary/family reunificatio assessment, and a family strengths/needs assessment.

"The former risk assessment consisted of a single tool to determi safety and risk," said Polk. "We found it wasn't meeting the need of the workers or the families. We researched what other states an counties were doing to find the best tool. Our goal was to move t a more global assessment and to do a better job bette understanding all family components - not just the family' presenting issues."

Normally, in multiple response, reports on the assessment track ar

not substantiated and the name of the alleged perpetrator is not entered into the state central registry of abuse and neglect. Under multiple response, substantiation is not required for a family to receive services. Instead, a family's needs dictate whether a case is opened. When serious maltreatment is uncovered during the course of an assessment, a family can be moved to the investigation track.

Missouri's Experience

In 1994, Missouri began using an alternative response approach to CPS services—"the dual-track approach." The state screened maltreatment reports into two categories: traditional investigation and family assessment. The family assessment track was nonaccusatory and supportive, offering services to families as soon as possible. The family was involved in developing a collaborative plan to address its problems and needs. During the initial pilot of Missouri's dual-track system, 71% of the reports were placed on the family assessment track and 29% on the investigation track.

"Staff were generally very excited to try a new approach—they weren't happy with the 'cookie-cutter approach' to this work," said Tena Thompson, children's services director for the St. Louis office of Missouri's Division of Family Services. "The community was concerned that the family assessment would have less focus on child safety than traditional CPS services. But we have had no problems—in fact, one of the complaints has been that more cases can't be on the assessment track.

"In looking at the family more holistically, we have been able to uncover more about the family—good and bad. We have been able to offer more services to the families through this approach. Our research has shown that this is an effective approach that doesn't compromise child safety and that makes families more invested in the process."

Jim Schrader, a social services worker in St. Louis, noted that he has been able to help families while not labeling them. "In the past, there was no distinction between criminal child abuse and family problems," Schrader said. "We had to indicate [a perpetrator], label the family—we could never be a teacher."

Missouri had its dual-track system rigorously evaluated by outside researchers in several pilot counties. The evaluation looked at the period prior to dual-track implementation compared to post-

implementation and also compared the pilot counties with counties not yet using the dual-track approach. A major finding of the study was that safety of children was not compromised, despite the fact that dual-track counties struggled with large caseloads and limited resources. In some circumstances, in fact, safety was improved. Other 1998 findings included:

- Hotline reports declined
- Reported incidents in which action was taken increased
- Children were made safer sooner
- Re-reports decreased
- Rates of removal of children from their homes were unchanged
- When removed from their homes, children spent less time in placement
- Needed services were delivered more quickly
- Community resources were better used
- Families were more satisfied and felt more involved in decisions
- Workers and community represent-atives preferred the family assess-ment approach

North Carolina

In North Carolina, social workers in the pilot counties anticipate that working with families from a strengths-based, family-centered perspective without labeling them will be a great asset.

"What I've seen is that staff are excited about multiple response—they are excited about trying something new," said Mary Jarrett, CPS supervisor in Alamance County. "Of course, change always elicits anxiety—this is a paradigm shift for us. But we have heard from workers in other states that families are much more willing to engage with you. Those same workers report that their [own] families and friends have noticed a change in them—they attribute the change to work being a much more positive environment."

With the multiple response system, North Carolina hopes to fare better in the next round of the U.S. Department of Health and Human Services' Child and Family Services Review (CFSR). With a portion of the CFSR focused on family-centered practice and child safety, N.C.'s multiple response system should help counties improve practice outcomes for the 2003 review. "Our best partner in ensuring safety is parents and caregivers," said JoAnn Lamm, policy and initiatives team leader at Children's Services in the N.C. Division of Social Services.

Each of the pilot counties will have the flexibility to implement multiple response in a way that makes sense for its community, Lamm said. Eventually, policymakers hope to take multiple response statewide.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 277*
PROPOSED COMMITTEE SUBSTITUTE H277-PCS70263-SW-7

Short Title: Establish Child Assessment Responses. (Public)

Sponsors:

Referred to:

February 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FAMILY ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE NEGLECTED OR DEPENDENT AND FOR INVESTIGATIVE ASSESSMENT RESPONSES IN CASES IN WHICH CHILDREN ARE REPORTED TO BE ABUSED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 reads as rewritten:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

(1) Abused juveniles. – Any juvenile less than 18 years of age whose parent, guardian, custodian, or caretaker:

a. Inflicts or allows to be inflicted upon the juvenile a serious physical injury by other than accidental means;

b. Creates or allows to be created a substantial risk of serious physical injury to the juvenile by other than accidental means;

c. Uses or allows to be used upon the juvenile cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;

d. Commits, permits, or encourages the commission of a violation of the following laws by, with, or upon the juvenile: first-degree rape, as provided in G.S. 14-27.2; second degree rape as provided in G.S. 14-27.3; first-degree sexual offense, as provided in G.S. 14-27.4; second degree sexual offense, as provided in G.S. 14-27.5; sexual act by a custodian, as provided in G.S. 14-27.7; crime against nature, as provided in G.S. 14-177; incest, as provided in ~~G.S. 14-178 and G.S. 14-179;~~ G.S. 14-178; preparation of obscene photographs,

slides, or motion pictures of the juvenile, as provided in G.S. 14-190.5; employing or permitting the juvenile to assist in a violation of the obscenity laws as provided in G.S. 14-190.6; dissemination of obscene material to the juvenile as provided in G.S. 14-190.7 and G.S. 14-190.8; displaying or disseminating material harmful to the juvenile as provided in G.S. 14-190.14 and G.S. 14-190.15; first and second degree sexual exploitation of the juvenile as provided in G.S. 14-190.16 and G.S. 14-190.17; promoting the prostitution of the juvenile as provided in G.S. 14-190.18; and taking indecent liberties with the juvenile, as provided in ~~G.S. 14-202.1, regardless of the age of the parties;~~ G.S. 14-202.1;

e. Creates or allows to be created serious emotional damage to the juvenile; serious emotional damage is evidenced by a juvenile's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or

f. Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the juvenile.

(2) Aggravated circumstances. – Any circumstance attending to the commission of an act of abuse or neglect which increases its enormity or adds to its injurious consequences, including, but not limited to, abandonment, torture, chronic abuse, or sexual abuse.

(3) Caretaker. – Any person other than a parent, guardian, or custodian who has responsibility for the health and welfare of a juvenile in a residential setting. A person responsible for a juvenile's health and welfare means a stepparent, foster parent, an adult member of the juvenile's household, an adult relative entrusted with the juvenile's care, any person such as a house parent or cottage parent who has primary responsibility for supervising a juvenile's health and welfare in a residential child care facility or residential educational facility, or any employee or volunteer of a division, institution, or school operated by the Department of Health and Human Services. "Caretaker" also means any person who has the responsibility for the care of a juvenile in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider. Nothing in this subdivision shall be construed to impose a legal duty of support under Chapter 50 or Chapter 110 of the General Statutes. The duty imposed upon a caretaker as defined in this subdivision shall be for the purpose of this Subchapter only.

(4) Clerk. – Any clerk of superior court, acting clerk, or assistant or deputy clerk.

(5) Community-based program. – A program providing nonresidential or residential treatment to a juvenile in the community where the

juvenile's family lives. A community-based program may include specialized foster care, family counseling, shelter care, and other appropriate treatment.

(6) Court. – The district court division of the General Court of Justice.

(7) Court of competent jurisdiction. – A court having the power and authority of law to act at the time of acting over the subject matter of the cause.

(7a) ~~"Criminal history" means a~~Criminal history. – A local, State, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, involving violence against a person.

(8) Custodian. – The person or agency that has been awarded legal custody of a juvenile by a court or a person, other than parents or legal guardian, who has assumed the status and obligation of a parent without being awarded the legal custody of a juvenile by a court.

(9) Dependent juvenile. – A juvenile in need of assistance or placement because the juvenile has no parent, guardian, or custodian responsible for the juvenile's care or supervision or whose parent, guardian, or custodian is unable to provide for the care or supervision and lacks an appropriate alternative child care arrangement.

(10) Director. – The director of the county department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(11) District. – Any district court district as established by G.S. 7A-133.

(11a) Family assessment response. – A response to selected reports of child neglect and dependency as determined by the Director using a family-centered approach that is protection and prevention oriented and that evaluates the strengths and needs of the juvenile's family, as well as the condition of the juvenile.

(11b) Investigative assessment response. – A response to reports of child abuse and selected reports of child neglect and dependency as determined by the Director using a formal information gathering process to determine whether a juvenile is abused, neglected, or dependent.

(12) Judge. – Any district court judge.

(13) Judicial district. – Any district court district as established by G.S. 7A-133.

(14) Juvenile. – A person who has not reached the person's eighteenth birthday and is not married, emancipated, or a member of the armed forces of the United States.

(15) Neglected juvenile. – A juvenile who does not receive proper care, supervision, or discipline from the juvenile's parent, guardian, custodian, or caretaker; or who has been abandoned; or who is not provided necessary medical care; or who is not provided necessary

remedial care; or who lives in an environment injurious to the juvenile's welfare; or who has been placed for care or adoption in violation of law. In determining whether a juvenile is a neglected juvenile, it is relevant whether that juvenile lives in a home where another juvenile has died as a result of suspected abuse or neglect or lives in a home where another juvenile has been subjected to abuse or neglect by an adult who regularly lives in the home.

(16) Petitioner. – The individual who initiates court action, whether by the filing of a petition or of a motion for review alleging the matter for adjudication.

(17) Prosecutor. – The district attorney or assistant district attorney assigned by the district attorney to juvenile proceedings.

(18) Reasonable efforts. – The diligent use of preventive or reunification services by a department of social services when a juvenile's remaining at home or returning home is consistent with achieving a safe, permanent home for the juvenile within a reasonable period of time. If a court of competent jurisdiction determines that the juvenile is not to be returned home, then reasonable efforts means the diligent and timely use of permanency planning services by a department of social services to develop and implement a permanent plan for the juvenile.

(19) Safe home. – A home in which the juvenile is not at substantial risk of physical or emotional abuse or neglect.

(20) Shelter care. – The temporary care of a juvenile in a physically unrestricting facility pending court disposition.

The singular includes the plural, the masculine singular includes the feminine singular and masculine and feminine plural unless otherwise specified."

SECTION 2. G.S. 7B-300 reads as rewritten:

"**§ 7B-300. Protective services.**

The director of the department of social services in each county of the State shall establish protective services for juveniles alleged to be abused, neglected, or dependent.

Protective services shall include the ~~investigation and~~ screening of ~~complaints,~~ reports, the performance of an assessment using either a family assessment response or an investigative assessment response, casework, or other counseling services to parents, guardians, or other caretakers as provided by the director to help the parents, guardians, or other caretakers and the court to prevent abuse or neglect, to improve the quality of child care, to be more adequate parents, guardians, or caretakers, and to preserve and stabilize family life.

The provisions of this Article shall also apply to child care facilities as defined in G.S. 110-86."

SECTION 3. G.S. 7B-301 reads as rewritten:

"**§ 7B-301. Duty to report abuse, neglect, dependency, or death due to maltreatment.**

Any person or institution who has cause to suspect that any juvenile is abused, neglected, or dependent, as defined by G.S. 7B-101, or has died as the result of

maltreatment, shall report the case of that juvenile to the director of the department of social services in the county where the juvenile resides or is found. The report may be made orally, by telephone, or in writing. The report shall include information as is known to the person making it including the name and address of the juvenile; the name and address of the juvenile's parent, guardian, or caretaker; the age of the juvenile; the names and ages of other juveniles in the home; the present whereabouts of the juvenile if not at the home address; the nature and extent of any injury or condition resulting from abuse, neglect, or dependency; and any other information which the person making the report believes might be helpful in establishing the need for protective services or court intervention. If the report is made orally or by telephone, the person making the report shall give the person's name, address, and telephone number. Refusal of the person making the report to give a name shall not preclude the department's ~~investigation~~ assessment of the alleged abuse, neglect, dependency, or death as a result of maltreatment.

Upon receipt of any report of sexual abuse of the juvenile in a child care facility, the director shall notify the State Bureau of Investigation within 24 hours or on the next workday. If sexual abuse in a child care facility is not alleged in the initial report, but during the course of the ~~investigation~~ assessment there is reason to suspect that sexual abuse has occurred, the director shall immediately notify the State Bureau of Investigation. Upon notification that sexual abuse may have occurred in a child care facility, the State Bureau of Investigation may form a task force to investigate the report."

SECTION 4. G.S. 7B-302 reads as rewritten:

"**§ 7B-302. ~~Investigation~~ Assessment by director; access to confidential information; notification of person making the report.**

(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough ~~investigation~~ assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the ~~investigation.~~ assessment. When the report alleges neglect or dependency, the director shall initiate the ~~investigation~~ assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an ~~investigation,~~ assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The ~~investigation~~ assessment and evaluation shall include a visit to the place where the juvenile ~~resides.~~resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the ~~investigation~~ assessment shall include a request from the director to law enforcement officials to

investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department.

(b) When a report of a juvenile's death as a result of suspected maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in a noninstitutional setting is received, the director of the department of social services shall immediately ascertain if other juveniles live in the home, and, if so, initiate an ~~investigation~~ assessment in order to determine whether they require protective services or whether immediate removal of the juveniles from the home is necessary for their protection. When a report of a juvenile's death as a result of maltreatment or a report of suspected abuse, neglect, or dependency of a juvenile in an institutional setting such as a residential child care facility or residential educational facility is received, the director of the department of social services shall immediately ascertain if other juveniles remain in the facility subject to the alleged perpetrator's care or supervision, and, if so, assess the circumstances of those juveniles in order to determine whether they require protective services or whether immediate removal of those juveniles from the facility is necessary for their protection.

(c) If the ~~investigation~~ assessment indicates that abuse, neglect, or dependency has occurred, the director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the director shall immediately provide or arrange for protective services. If the parent, guardian, custodian, or caretaker refuses to accept the protective services provided or arranged by the director, the director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

(d) If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the director shall sign a complaint ~~which~~ that alleges the applicable facts to invoke the jurisdiction of the court. Where the ~~investigation~~ assessment shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 5 of this Chapter.

(d1) Whenever a juvenile is removed from the home of a parent, guardian, custodian, stepparent, or adult relative entrusted with the juvenile's care due to physical abuse, the director shall conduct a thorough review of the background of the alleged abuser or abusers. This review shall include a criminal history check and a review of any available mental health records. If the review reveals that the alleged abuser or abusers have a history of violent behavior against people, the director shall petition the court to order the alleged abuser or abusers to submit to a complete mental health evaluation by a licensed psychologist or psychiatrist.

(e) In performing any duties related to the ~~investigation~~ assessment of the ~~complaint~~ report or the provision or arrangement for protective services, the director may consult with any public or private agencies or individuals, including the available State or local law enforcement officers who shall assist in the ~~investigation~~ assessment and evaluation of the seriousness of any report of abuse, neglect, or dependency when

requested by the director. The director or the director's representative may make a written demand for any information or reports, whether or not confidential, that may in the director's opinion be relevant to the ~~investigation of or the provision for~~ assessment or provision of protective services. Upon the director's or the director's representative's request and unless protected by the attorney-client privilege, any public or private agency or individual shall provide access to and copies of this confidential information and these records to the extent permitted by federal law and regulations. If a custodian of criminal investigative information or records believes that release of the information will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such an action, the custodian of the records shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this paragraph shall be set down for immediate hearing, and subsequent proceedings in the actions shall be accorded priority by the trial and appellate courts.

(f) Within five working days after receipt of the report of abuse, neglect, or dependency, the director shall give written notice to the person making the report, unless requested by that person not to give notice, as to whether the report was accepted for ~~investigation~~ assessment and whether the report was referred to the appropriate State or local law enforcement agency.

(g) Within five working days after completion of the protective services ~~investigation,~~ assessment, the director shall give subsequent written notice to the person making the report, unless requested by that person not to give notice, as to whether there is a finding of abuse, neglect, or dependency, whether the county department of social services is taking action to protect the juvenile, and what action it is taking, including whether or not a petition was filed. The person making the report shall be informed of procedures necessary to request a review by the prosecutor of the director's decision not to file a petition. A request for review by the prosecutor shall be made within five working days of receipt of the second notification. The second notification shall include notice that, if the person making the report is not satisfied with the director's decision, the person may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive the person's right to this notification, and no notification is required if the person making the report does not identify himself to the director.

(h) The director or the director's representative may not enter a private residence for ~~investigation~~ assessment purposes without at least one of the following:

(1) The reasonable belief that a juvenile is in imminent danger of death or serious physical injury.

(2) The permission of the parent or person responsible for the juvenile's care.

(3) The accompaniment of a law enforcement officer who has legal authority to enter the residence.

(4) An order from a court of competent jurisdiction."

SECTION 5. G.S. 7B-303 reads as rewritten:

"**§ 7B-303. Interference with ~~investigation.~~ assessment.**

(a) If any person obstructs or interferes with an ~~investigation~~ assessment required by G.S. 7B-302, the director may file a petition naming ~~said~~ that person as respondent and requesting an order directing the respondent to cease ~~such~~ the obstruction or interference. The petition shall contain the name and date of birth and address of the juvenile who is the subject of the ~~investigation,~~ assessment; shall include a concise statement of the basis for initiating the assessment, shall specifically describe the conduct alleged to constitute obstruction of or interference with the ~~investigation,~~ assessment; and shall be verified.

(b) For purposes of this section, obstruction of or interference with an ~~investigation~~ assessment means refusing to disclose the whereabouts of the juvenile, refusing to allow the director to have personal access to the juvenile, refusing to allow the director to observe or interview the juvenile in private, refusing to allow the director access to confidential information and records upon request pursuant to G.S. 7B-302, refusing to allow the director to arrange for an evaluation of the juvenile by a physician or other expert, or other conduct that makes it impossible for the director to carry out the duty to ~~investigate.~~ assess the juvenile's condition.

(c) Upon filing of the petition, the court shall schedule a hearing to be held not less than five days after service of the petition and summons on the respondent. Service of the petition and summons and notice of hearing shall be made as provided by the Rules of Civil Procedure on the respondent; the juvenile's parent, guardian, custodian, or caretaker; and any other person determined by the court to be a necessary party. If at the hearing on the petition the court finds by clear, cogent, and convincing evidence that the respondent, without lawful excuse, has obstructed or interfered with an ~~investigation~~ assessment required by G.S. 7B-302, the court may order the respondent to cease such obstruction or interference. The burden of proof shall be on the petitioner.

(d) If the director has reason to believe that the juvenile is in need of immediate protection or assistance, the director shall so allege in the petition and may seek an ex parte order from the court. If the court, from the verified petition and any inquiry the court makes of the director, finds probable cause to believe both that the juvenile is at risk of immediate harm and that the respondent is obstructing or interfering with the director's ability to ~~investigate to determine~~ assess the juvenile's condition, the court may enter an ex parte order directing the respondent to cease ~~such~~ the obstruction or interference. The order shall be limited to provisions necessary to enable the director to conduct an ~~investigation~~ assessment sufficient to determine whether the juvenile is in need of immediate protection or assistance. Within 10 days after the entry of an ex parte order under this subsection, a hearing shall be held to determine whether there is good cause for the continuation of the order or the entry of a different order. An order entered under this subsection shall be served on the respondent along with a copy of the petition, summons, and notice of hearing.

(e) The director may be required at a hearing under this section to reveal the identity of any person who made a report of suspected abuse, neglect, or dependency as required by G.S. 7B-301.

(f) An order entered pursuant to this section is enforceable by civil or criminal contempt as provided in Chapter 5A of the General Statutes."

SECTION 6. G.S. 7B-305 reads as rewritten:

"**§ 7B-305. Request for review by prosecutor.**

The person making the report shall have five working days, from receipt of the decision of the director of the department of social services not to petition the court, to notify the prosecutor that the person is requesting a review. The prosecutor shall notify the person making the report and the director of the time and place for the review, and the director shall immediately transmit to the prosecutor a copy of ~~the investigation report.~~ a summary of the assessment."

SECTION 7. G.S. 7B-307 reads as rewritten:

"**§ 7B-307. Duty of director to report evidence of abuse, neglect; investigation by local law enforcement; notification of Department of Health and Human Services and State Bureau of Investigation.**

(a) If the director finds evidence that a juvenile may have been abused as defined by G.S. 7B-101, the director shall make an immediate oral and subsequent written report of the findings to the district attorney or the district attorney's designee and the appropriate local law enforcement agency within 48 hours after receipt of the report. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate and coordinate a criminal investigation with the protective services ~~investigation~~ assessment being conducted by the county department of social services. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate and may request the director or the director's designee to appear before a magistrate.

If the director receives information that a juvenile may have been physically harmed in violation of any criminal statute by any person other than the juvenile's parent, guardian, custodian, or caretaker, the director shall make an immediate oral and subsequent written report of that information to the district attorney or the district attorney's designee and to the appropriate local law enforcement agency within 48 hours after receipt of the information. The local law enforcement agency shall immediately, but no later than 48 hours after receipt of the information, initiate a criminal investigation. Upon completion of the investigation, the district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7B-301 involves abuse or neglect of a juvenile in child care, the director shall notify the Department of Health and Human Services within 24 hours or on the next working day of receipt of the report.

(b) If the director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7B-101 in a child care facility, the director shall immediately so notify the Department of Health and Human Services and, in the case of sexual abuse, the State Bureau of Investigation, in such a way as does not violate the law guaranteeing the confidentiality of the records of the department of social services.

(c) Upon completion of the ~~investigation,~~ assessment, the director shall give the Department written notification of the results of the ~~investigation~~ assessment required by G.S. 7B-302. Upon completion of an ~~investigation~~ assessment of sexual abuse in a child care facility, the director shall also make written notification of the results of the ~~investigation~~ assessment to the State Bureau of Investigation.

The director of the department of social services shall submit a report of alleged abuse, neglect, or dependency cases or child fatalities that are the result of alleged maltreatment to the central registry under the policies adopted by the Social Services Commission."

SECTION 8. G.S. 7B-308(b) reads as rewritten:

"(b) Immediately upon receipt of judicial authority to retain custody, the physician, the administrator, or that person's designee shall so notify the director of social services for the county in which the facility is located. The director shall treat this notification as a report of suspected abuse and shall immediately begin an ~~investigation~~ assessment of the case.

(1) If the ~~investigation~~ assessment reveals (i) that it is the opinion of the certifying physician that the juvenile is in need of medical treatment to cure or alleviate physical distress or to prevent the juvenile from suffering serious physical injury, and (ii) that it is the opinion of the physician that the juvenile should for these reasons remain in the custody of the facility for 12 hours, but (iii) that the juvenile's parent, guardian, custodian, or caretaker cannot be reached or, upon request, will not consent to the treatment within the facility, the director shall within the initial 12-hour period file a juvenile petition alleging abuse and setting forth supporting allegations and shall seek a nonsecure custody order. A petition filed and a nonsecure custody order obtained in accordance with this subdivision shall come on for hearing under the regular provisions of this Subchapter unless the director and the certifying physician together voluntarily dismiss the petition.

(2) In all cases except those described in subdivision (1) above, the director shall conduct the ~~investigation~~ assessment and may initiate juvenile proceedings and take all other steps authorized by the regular provisions of this Subchapter. If the director decides not to file a petition, the physician, the administrator, or that person's designee may ask the prosecutor to review this decision according to the provisions of G.S. 7B-305 and G.S. 7B-306."

SECTION 9. G.S. 7B-309 reads as rewritten:

"**§ 7B-309. Immunity of persons reporting and cooperating in an ~~investigation.~~ assessment.**

Anyone who makes a report pursuant to this Article, cooperates with the county department of social services in a protective services ~~inquiry or investigation,~~ assessment, testifies in any judicial proceeding resulting from a protective services report or ~~investigation,~~ assessment, or otherwise participates in the program authorized by this Article, is immune from any civil or criminal liability that might otherwise be

incurred or imposed for that action provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed."

SECTION 10. G.S. 7B-404(a) reads as rewritten:

"(a) When the office of the clerk is closed, a magistrate may be authorized by the chief district court judge to draw, verify, and issue petitions as follows:

(1) When the director of the department of social services requests a petition alleging a juvenile to be abused, neglected, or dependent, or

(2) When the director of the department of social services requests a petition alleging the obstruction of or interference with an ~~investigation~~ assessment required by G.S. 7B-302."

SECTION 11. G.S. 7B-506(h)(3) reads as rewritten:

"(3) Inquire as to whether there are other juveniles remaining in the home from which the juvenile was removed and, if there are, inquire as to the specific findings of the ~~investigation~~ assessment conducted under G.S. 7B-302 and any actions taken or services provided by the director for the protection of the other juveniles."

SECTION 12. G.S. 108A-14(a)(11) reads as rewritten:

"**§ 108A-14. Duties and responsibilities.**

(a) The director of social services shall have the following duties and responsibilities:

...

(11) To ~~investigate~~ assess reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General Statutes;".

SECTION 13. The Department of Health and Human Services shall continue to assess the alternative response system of child protection as to the impact the system has in child safety, timeliness of response, timeliness of service, and coordination of local human services. The Department shall report the status of its evaluation to the Legislative Study Commission on Children and Youth, the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division before the convening of the 2006 Regular Session of the 2005 General Assembly.

SECTION 14. This act becomes effective October 1, 2005.

House Pages

Name Of Committee: Jud. IV Date: 3/29/05

1. Name: William McLeod
   County: Henderson
   Sponsor: Carolyn Justus
2. Name: Ashley Emory
   County: Durham
   Sponsor: Mr. Crawford
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: James Worth
2. Name: Linda Fuller
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

Jud. IV — 3/29/05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Denise Boyette	Johnston Co. DSS
Chris Sinha	NC Div Soc Serv / A.G.
JoAnn Lam	DHHS / DSS
Jane Smith	DHHS/DSS
Karen Georg	NCACDSS
Jennifer Sullivan	NASW. NC
Brian Lewis	Covenant w/ NC's Children
Tony Troop	NC DSS

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Thursday, March 31, 2005

The House Committee on Judiciary IV met on Thursday, March 31, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Earline Parmon and Karen Ray. Trina Griffin, Jennifer McGinnis and Steve Rose, staff counselors were present. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order and introduced pages and Sergeants-at-Arms. She announced that HB 347 – PUNISHMENT FOR FAILURE TO YIELD CAUSING DEATH had been displaced by request from Representative Glazier, a primary sponsor of the bill.

Representative Glazier and Representative Kiser, primary sponsors, spoke on HB 821 – EVIDENCE/SPEED-MEASURING INSTRUMENTS. Discussion followed, with the primary sponsors and Mr. George Haire, Department of Justice, answering questions about the bill. Representative Parmon moved that the bill receive a favorable report. The motion was adopted.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Committee Report – HB 821, Agenda, HB 347 (displaced), HB 821, Bill Analysis, Listing of Pages, Visitor Registration.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 821 A BILL TO BE ENTITLED AN ACT RELATING TO THE ADMISSIBILITY OF THE RESULTS OF SPEED-MEASURING INSTRUMENTS.

☒ 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

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, March 31, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 347 – PUNISHMENT FOR FAILURE TO YIELD CAUSING DEATH
Representatives Glazier, Hill and Sauls, Sponsors

HB 821 – EVIDENCE/SPEED-MEASURING INSTRUMENTS
Representatives Glazier and Kiser, Sponsors

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 347

Short Title:	Punishment for Failure to Yield Causing Death.	(Public)
Sponsors:	Representatives Glazier, Hill, Sauls (Primary Sponsors); Folwell and Moore.	
Referred to:	Judiciary IV.	

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A PUNISHMENT FOR FAILURE TO YIELD RESULTING IN DEATH.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-160.1(a) reads as rewritten:

"(a) Unless the conduct is covered under some other law providing greater punishment, a person who commits the offense of failure to yield while approaching or entering an intersection, turning at a stop or yield sign, entering a roadway, upon the approach of an emergency vehicle, or at highway construction or maintenance shall be punished under this section.

(1) When there is serious bodily injury but no death resulting from the violation, the violator shall be fined five hundred dollars ($500.00) and the violator's drivers license or commercial drivers license shall be suspended for 90 days.

(2) When a death results from the violation, the violator shall be fined one thousand dollars ($1,000) and the violator's drivers license or commercial drivers license shall be suspended for six months."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 821

Short Title:	Evidence/Speed-Measuring Instruments.	(Public)
Sponsors:	Representatives Glazier and Kiser (Primary Sponsors).	
Referred to:	Judiciary IV.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT RELATING TO THE ADMISSIBILITY OF THE RESULTS OF SPEED-MEASURING INSTRUMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 8-50.2 reads as rewritten:

"**§ 8-50.2. Results of speed-measuring instruments; admissibility.**

(a) The results of the use of radio microwave, laser, or other speed-measuring instruments shall be admissible as evidence of the speed of an object in any criminal or civil proceeding for the purpose of corroborating the opinion of a person as to the speed of an object based upon the visual observation of the object by such person.

(b) Notwithstanding the provisions of subsection (a) of this section, the results of a radio microwave, laser, or other electronic speed-measuring instrument are not admissible in any proceeding unless it is found that:

(1) The operator of the instrument held, at the time the results of the speed-measuring instrument were obtained, a certificate from the North Carolina Criminal Justice Education and Training Standards Commission (hereinafter referred to as the Commission) authorizing him to operate the speed-measuring instrument from which the results were obtained.

(2) The operator of the instrument operated the speed-measuring instrument in accordance with the procedures established by the Commission for the operation of such instrument.

(3) The instrument employed was approved for use by the Commission and the Secretary of Crime Control and Public Safety pursuant to G.S. 17C-6.

(4) The speed-measuring instrument had been calibrated and tested for accuracy in accordance with the standards established by the Commission for that particular instrument.

(c) All radio ~~microwave~~ microwave, laser, and other electronic speed-measuring instruments shall be tested for accuracy within a 12-month period prior to the alleged violation by a technician possessing at least a ~~second-class or general radiotelephone license from the Federal Communications Commission or a certification issued by organizations or committees endorsed by the Federal Communications Commission within a period of 12 months prior to the alleged violation.~~ General Radiotelephone Operator License from the Federal Communications Commissions or possessing a Certified Electronics Technician certificate issued by a Federal Communications Commission Commercial Operators License Examination Manager or by a laboratory established by the International Association of Chiefs of Police. A written certificate by ~~such~~ the technician or laboratory showing that the test was made within the required period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.

All ~~laser~~ radio microwave, laser, and other speed enforcement instruments shall be tested in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission. The Commission shall provide for certification of ~~laser~~ all radio microwave, laser, and other speed enforcement instruments. ~~A written certificate by a technician certified by the Commission showing that a test was made within the required testing period and that the instrument was accurate shall be competent and prima facie evidence of those facts in any proceeding referred to in subsection (a) of this section.~~

(d) In every proceeding where the results of a radio microwave, laser, or other speed-measuring instrument is sought to be admitted, judicial notice shall be taken of the rules approving the use of the models and types of radio ~~microwave~~ microwave, laser, and other speed-measuring instruments and the procedures for operation and calibration or measuring accuracy of such instruments."

SECTION 2. This act becomes effective October 1, 2005.

HOUSE BILL 821:
Evidence/Speed-Measuring Instruments

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier and Kiser
Date:	March 31, 2005	**Summary by:**	Trina Griffin
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 821 updates and clarifies the statute relating to the testing of speed-measuring devices and the required qualifications of the technicians testing those devices for purposes of admitting the results into evidence at trial. This act would become effective October 1, 2005.***

CURRENT LAW & BILL ANALYSIS: In order for the results of a speed-measuring device to be admissible into evidence in a court of law, the instrument must have been calibrated within 12 months of the alleged violation by a certified technician. Under current law, a technician must have either of the following to be properly certified:

- A second class license from the FCC
- A general radiotelephone license from the FCC
- Certification issued by organizations or committees endorsed by the FCC

However, the FCC no longer issues second-class licenses, and they have never endorsed other organizations or committees who issue certifications. Therefore, those references are outdated or obsolete.

Under the bill, a technician with a "General Radiotelephone Operator License" (GROL) is still qualified to perform calibrations because the FCC still issues these licenses, but the bill provides two additional certification options:

- A Certified Electronics Technician certificate issued by an FCC Commercial Operators License Examination Manager
- A Certified Electronics Technician certificate issued by a laboratory established by the International Association of Chiefs of Police.

These revisions will align G.S. 8-50.2 with the current policy and practice of the FCC and bring consistency between the statute and the North Carolina Administrative Code provisions addressing the State's Speed Measuring Program. The revision is also designed to address anticipated advances in future speed-measuring technology as well as possible changes in the certification program of the FCC.

The other changes in the bill are designed to consolidate and clarify, but do not make any substantive changes. Specifically, the current statute separates radio microwave and other electronic speed-measuring instruments from laser speed-enforcement instruments. However, the distinction is unnecessary since all classes of speed-measuring instruments are required to be calibrated on an annual basis and are all subject to testing in accordance with standards established by the North Carolina Criminal Justice Education and Training Standards Commission.

BACKGROUND: This bill is a recommendation of the Department of Justice.

House Pages

Name Of Committee: JDIV Date: 03/31/05

1. Name: Downing McDade
   County: Iredell
   Sponsor: Karen Ray
2. Name: Abby Robbins
   County: Pender
   Sponsor: Rep. Wright
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

George Hare
Dep't of Justice

Lorrin Freeman
D.O.J.

Sgt-At-Arms

1. Name:
2. Name: Bill Sullivan
3. Name: Jim Womack
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

JD IV — 03/31/05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Amanda Skinner	NCLCPS
Mike Hodges	CBA/ABATE of NC
Larrin Freeman	NCDOT
George Hare	"
Matt Osborne	AOC

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, April 5, 2005

The House Committee on Judiciary IV met on Tuesday, April 5, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Carolyn Justus, Grier Martin, Karen Ray and staff counselors Trina Griffin, Jennifer McGinnis and Steve Rose. Representatives Paul Stam and Phil Haire, primary sponsors of HB 822 were present as was Representative Setzer. Matthew Staples, a student from Cary High School who is "shadowing" Representative Weiss today was also present. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting.

Chairman Weiss introduced Representative Stam who spoke on House Bill 822 – BLAKELY DECISION/CONFORM STATE LAW. Representative Glazier spoke explaining the background and reasons for the bill and said that this bill, drafted by Jim Drennan of the Institute of Government, is a recommendation of the Sentencing Commission. Steve Rose, Committee counsel, was asked to further explain the bill. Discussion followed with some questions being answered by Mr. Drennan, John Madler of the NC Sentencing and Policy Advisory Commission, and Greg Stahl, Deputy Director of the Administrative Office of the Courts. Representative Glazier stated that cost and efficiency would, overall, balance out. The Fiscal Department said that there is no incarceration note for this bill and no fiscal note as there is no way to put a cost to it. Representative Glazier sent an amendment forth and moved for adoption of the amendment. The amendment was adopted. Representative Glazier moved that the amendment be rolled into a Committee Substitute and that the committee substitute be given a favorable report, unfavorable to the original bill. The motion was adopted.

There being no further business, the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Committee Report, Agenda, HB 822, Bill Analysis, Amendment, Committee Substitute, Listing of Pages, Visitor Registration.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 822 A BILL TO BE ENTITLED AN ACT TO AMEND STATE LAW REGARDING THE DETERMINATION OF AGGRAVATING FACTORS IN A CRIMINAL CASE TO CONFORM WITH THE UNITED STATES SUPREME COURT DECISION IN BLAKELY V. WASHINGTON..

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

X☐With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday April 5, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

HB 822 – BLAKELY DECISION/CONFORM STATE LAW
Representatives: Glazier, Haire, Ross, Stam – Primary Sponsors

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 822

Short Title:	Blakely Decision/Conform State Law.	(Public)
Sponsors:	Representatives Glazier, Haire, Ross,, Stam (Primary Sponsors); Harrison and Michaux.	
Referred to:	Judiciary IV.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND STATE LAW REGARDING THE DETERMINATION OF AGGRAVATING FACTORS IN A CRIMINAL CASE TO CONFORM WITH THE UNITED STATES SUPREME COURT DECISION IN BLAKELY V. WASHINGTON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16 reads as rewritten:

"**§ 15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving ~~by a preponderance of the evidence~~ beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or

disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors or a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the State seeks to establish.

(b) When Aggravated or Mitigated Sentence Allowed. – If the ~~court~~ jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, ~~it~~ the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If ~~the court finds that~~ aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:
(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

(2) The defendant was a passive participant or played a minor role in the commission of the offense.
(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
(5) The defendant has made substantial or full restitution to the victim.
(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
(10) The defendant reasonably believed that the defendant's conduct was legal.
(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
(13) The defendant is a minor and has reliable supervision available.
(14) The defendant has been honorably discharged from the United States armed services.
(15) The defendant has accepted responsibility for the defendant's criminal conduct.
(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
(17) The defendant supports the defendant's family.
(18) The defendant has a support system in the community.
(19) The defendant has a positive employment history or is gainfully employed.
(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
(21) Any other mitigating factor reasonably related to the purposes of sentences."

SECTION 2. G.S. 15A-1340.14 reads as rewritten:

"**§ 15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (b)(7). The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (b)(7) of this section as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – 0 points.

(2) Level II – At least 1, but not more than 4 points.

(3) Level III – At least 5, but not more than 8 points.

(4) Level IV – At least 9, but not more than 14 points.

(5) Level V – At least 15, but not more than 18 points.

(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's

full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

SECTION 3. G.S. 15A-924(a) is amended by adding a new subdivision to read:

"(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise

factual statement indicating the factor or factors it intends to use under the authority of that subdivision."

SECTION 4. Article 58 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.**

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and

(2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate."

SECTION 5. This act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

HB 822:
Blakely Decision/Conform State Law

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Glazier, Haire, Ross, Stam
Date:	April 5, 2005		
Version:	1st Edition	**Summary by:**	Steven Rose Committee Counsel*

SUMMARY: ***The United States Supreme Court recently held in the case of Blakely v. Washington, decided in June 2004, that in order for a trial judge to impose a sentence longer than would be allowed as the statutory maximum, the facts supporting the imposition of the longer sentence must be found by a jury beyond a reasonable doubt, or be admitted by the defendant. The North Carolina Court of Appeals subsequently held, in State v. Allen, decided in September 2004, that the decision in Blakely means that under North Carolina's Structured Sentencing Act the existence of aggravating factors that will increase a felony sentence beyond that which is permitted under the presumptive range must be found by a jury beyond a reasonable doubt, or be admitted by the defendant.***

HB 822 provides the procedure for determining the existence of aggravating factors that will comply with the decisions in Blakely and Allen by providing for jury trials or the admission of aggravating factors by a defendant.

BILL ANALYSIS: Under the present structured sentencing law, the judge may impose a sentence for conviction of a felony offense from the presumptive range, the aggravated range if the case is more serious, or the mitigated range if the case is less serious. In order to impose a sentence from the aggravated range, the judge must find, based on a preponderance of the evidence, that one or more aggravating factors are present in that particular case. In the case of Blakely v. Washington, the United States Supreme Court said that the Sixth Amendment right to trial by jury prohibits a judge from imposing a sentence longer than the statutory maximum sentence unless the facts supporting the longer sentence are found by a jury beyond a reasonable doubt or admitted by the defendant. In the case of State v. Allen, the North Carolina Court of Appeals held that the Blakely case applied to the structured sentencing laws in North Carolina and that the judge could not impose a sentence beyond the presumptive range unless a jury found aggravating factors present beyond a reasonable doubt or the defendant admitted them. This bill amends the process for finding aggravating factors to ensure that the defendant is given notice of the factors and given the right to have them found by a jury beyond a reasonable doubt.

A detailed explanation of HB 822 follows:

Section 1. Amends G.S. 15A-1340.16, the current aggravated and mitigated sentencing statute, to add new procedural steps for the jury to find aggravating factors.

Subsection (a). Raises the standard of proof for finding aggravating factors from "a preponderance of the evidence" to "beyond a reasonable doubt." The standard for mitigating factors remains a preponderance of the evidence.

Subsection (a1). Adds the requirement that, unless the defendant admits to the existence of an aggravating factor, only the jury may determine if an aggravating factor is present in a case. The jury may make this determination at the time of trial or, if the judge finds that the interests of justice require a separate sentencing proceeding, the judge may hold one with that jury after the guilty verdict is returned.

Subsection (a2). Allows the defendant to plead guilty to the aggravating factor, but still have a jury trial on the underlying felony. The evidence of the aggravating factor would be excluded from the trial.

Subsection (a3). Allows the defendant to plead guilty to the underlying felony, but have a jury trial on the aggravating factor.

Subsection (a4). Requires the State to include non-statutory aggravating factors (under subdivision (d)(20)) in the indictment or other charging instrument. Statutory aggravating factors do not have to be included in the indictment or other charging instrument but the defendant must receive written notice. (See subsection (a6) below.) Aggravating factors under subdivision (d)(20) are factors not specifically denominated in subsection (d) that are reasonably related to the purposes of sentencing.

Subsection (a5). Requires the State to follow the procedures in subdivisions (a1) through (a3) (jury trial and proof beyond a reasonable doubt, or admission by defendant) if it seeks to establish a prior record level point under G.S. 15A-1340.14(b)(7). (The offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment.)

Subsection (a6). Requires the State to provide the defendant with written notice of its intent to prove the existence of one or more aggravating factors or prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. The notice must list all of the aggravating factors the State seeks to establish and the defendant may waive his right to receive notice.

Subsection (b). Conforming change. States that the jury determines whether aggravating factors exist. The judge continues to find mitigating factors and to weigh the aggravating and mitigating factors to determine the appropriate sentence range.

Subsection (c). Requires the judge to enter the jury's finding of aggravating factors on the appropriate judgment form.

Subsection (d). States that the judge finds whether an aggravating factor under subdivision (18a) exists. This factor relates to prior juvenile adjudications. (The finding of prior convictions was expressly excluded from the Blakely decision.)

Section 2. Amends G.S. 15A-1340.14 by requiring that a prior record level point under subdivision (b)(7) must be found by a jury. (See description under subsection (a5) above.) Makes other conforming changes.

Section 3. Adds the requirement that the State must set out in the indictment that it intends to use one or more non-statutory aggravating factors (G.S. 15A-1340.16(d)(20)) and a factual statement indicating the factors it intends to use. This is a conforming change.

Section 4. Adds a new statute that establishes the procedure for the judge to accept the defendant's admission of the existence of one or more aggravating factors or the prior record level point.

Subsection (a). Requires the judge to determine whether the State intends to seek a sentence in the aggravated range or the prior record level point before he or she accepts a plea of guilty or no contest. If the State does intend to seek aggravating factors, the judge must determine which factors the State will seek to establish and whether the State has provided the written notice required by law.

Subsection (b). Requires the judge, in all cases where a defendant admits to the existence of an aggravating factor or a prior record level point, to advise the defendant that he or she has the right to have a jury determine the existence of the aggravating factor or prior record level point and that he or she has the right to prove the existence of any mitigating factors.

Subsection (c). Requires the judge, before accepting an admission to the existence of an aggravating factor or prior record level point, to determine that there is a factual basis for the admission and that the admission is the result of an informed choice by the defendant.

Subsection (d). Allows the defendant to admit an aggravating factor or the prior record level point before or after the trial of the underlying felony.

Subsection (e). Applies the procedures for handling guilty pleas (Article 58 of Chapter 15A of the North Carolina General Statutes) to the handling of admissions to aggravating factors and prior record points.

Section 5. Provides that the act is effective when it becomes law and applies to offenses committed on or after that date.

***John Madler, Associate Director for Policy and Staff Attorney for the North Carolina Sentencing and Policy Advisory Commission, substantially contributed to the preparation of this summary. His assistance is gratefully acknowledged.**

H822-smrl-001

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 822

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

H822-ARL-2 [v.1]

Date April 5, 2005

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

Representative Glazier

moves to amend the bill on page 2, line 30, by adding the following words after the word "factors": "under subsection (d) of this section";
and on page 6, line 32, by deleting the words "subdivision (b)(7)." and substituting the words "subdivision (7) of this subsection.";
and on page 6, line 34, by deleting the words "subdivision (b)(7) of this section" and substituting the words "subdivision (7) of this subsection".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 822
PROPOSED COMMITTEE SUBSTITUTE H822-PCS60308-RL-10

Short Title: Blakely Decision/Conform State Law. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND STATE LAW REGARDING THE DETERMINATION OF AGGRAVATING FACTORS IN A CRIMINAL CASE TO CONFORM WITH THE UNITED STATES SUPREME COURT DECISION IN BLAKELY V. WASHINGTON.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1340.16 reads as rewritten:

"**§ 15A-1340.16. Aggravated and mitigated sentences.**

(a) Generally, Burden of Proof. – The court shall consider evidence of aggravating or mitigating factors present in the offense that make an aggravated or mitigated sentence appropriate, but the decision to depart from the presumptive range is in the discretion of the court. The State bears the burden of proving ~~by a preponderance of the evidence~~ beyond a reasonable doubt that an aggravating factor exists, and the offender bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. – The defendant may admit to the existence of an aggravating factor, and the factor so admitted shall be treated as though it were found by a jury pursuant to the procedures in this subsection. Admissions of the existence of an aggravating factor must be consistent with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury may determine if an aggravating factor is present in an offense. The jury impaneled for the trial of the felony may, in the same trial, also determine if one or more aggravating factors is present, unless the court determines that the interests of justice require that a separate sentencing proceeding be used to make that determination. If the court determines that a separate proceeding is required, the proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of whether one or more aggravating factors exist, any juror dies, becomes incapacitated or

disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which the juror was selected. If the trial jury is unable to reconvene for a hearing on the issue of whether one or more aggravating factors exist after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue. A jury selected to determine whether one or more aggravating factors exist shall be selected in the same manner as juries are selected for the trial of criminal cases.

(a2) Procedure if Defendant Admits Aggravating Factor Only. – If the defendant admits that an aggravating factor exists, but pleads not guilty to the underlying felony, a jury shall be impaneled to dispose of the felony charge. In that case, evidence that relates solely to the establishment of an aggravating factor shall not be admitted in the felony trial.

(a3) Procedure if Defendant Pleads Guilty to the Felony Only. – If the defendant pleads guilty to the felony, but contests the existence of one or more aggravating factors, a jury shall be impaneled to determine if the aggravating factor or factors exist.

(a4) Pleading of Aggravating Factors. – Aggravating factors set forth in subsection (d) of this section need not be included in an indictment or other charging instrument. Any aggravating factor alleged under subdivision (d)(20) of this section shall be included in an indictment or other charging instrument, as specified in G.S. 15A-924.

(a5) Procedure to Determine Prior Record Level Points Not Involving Prior Convictions. – If the State seeks to establish the existence of a prior record level point under G.S. 15A-1340.14(b)(7), the jury shall determine whether the point should be assessed using the procedures specified in subsections (a1) through (a3) of this section. The State need not allege in an indictment or other pleading that it intends to establish the point.

(a6) Notice of Intent to Use Aggravating Factors or Prior Record Level Points. – The State must provide a defendant with written notice of its intent to prove the existence of one or more aggravating factors under subsection (d) of this section or a prior record level point under G.S. 15A-1340.14(b)(7) at least 30 days before trial or the entry of a guilty or no contest plea. A defendant may waive the right to receive such notice. The notice shall list all the aggravating factors the State seeks to establish.

(b) When Aggravated or Mitigated Sentence Allowed. – If the ~~court~~ jury, or with respect to an aggravating factor under G.S. 15A-1340.16(d)(18a), the court, finds that aggravating factors exist or the court finds that mitigating factors exist, ~~it~~ the court may depart from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If ~~the court finds that~~ aggravating factors are present and the court determines they are sufficient to outweigh any mitigating factors that are present, it may impose a sentence that is permitted by the aggravated range described in G.S. 15A-1340.17(c)(4). If the court finds that mitigating factors are present and are sufficient to outweigh any aggravating factors that are present, it may impose a sentence that is permitted by the mitigated range described in G.S. 15A-1340.17(c)(3).

(c) Written Findings; When Required. – The court shall make findings of the aggravating and mitigating factors present in the offense only if, in its discretion, it departs from the presumptive range of sentences specified in G.S. 15A-1340.17(c)(2). If the jury finds factors in aggravation, the court shall ensure that those findings are entered in the court's determination of sentencing factors form or any comparable document used to record the findings of sentencing factors. Findings shall be in writing. The requirement to make findings in order to depart from the presumptive range applies regardless of whether the sentence of imprisonment is activated or suspended.

(d) Aggravating Factors. – The following are aggravating factors:

(1) The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

(2) The defendant joined with more than one other person in committing the offense and was not charged with committing a conspiracy.

(2a) The offense was committed for the benefit of, or at the direction of, any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, and the defendant was not charged with committing a conspiracy. A "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of felony or violent misdemeanor offenses, or delinquent acts that would be felonies or violent misdemeanors if committed by an adult, and having a common name or common identifying sign, colors, or symbols.

(3) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

(4) The defendant was hired or paid to commit the offense.

(5) The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

(6) The offense was committed against or proximately caused serious injury to a present or former law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of that person's official duties or because of the exercise of that person's official duties.

(7) The offense was especially heinous, atrocious, or cruel.

(8) The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

(9) The defendant held public office at the time of the offense and the offense related to the conduct of the office.

(10) The defendant was armed with or used a deadly weapon at the time of the crime.

(11) The victim was very young, or very old, or mentally or physically infirm, or handicapped.
(12) The defendant committed the offense while on pretrial release on another charge.
(13) The defendant involved a person under the age of 16 in the commission of the crime.
(14) The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.
(15) The defendant took advantage of a position of trust or confidence, including a domestic relationship, to commit the offense.
(16) The offense involved the sale or delivery of a controlled substance to a minor.
(16a) The offense is the manufacture of methamphetamine and was committed where a person under the age of 18 lives, was present, or was otherwise endangered by exposure to the drug, its ingredients, its by-products, or its waste.
(17) The offense for which the defendant stands convicted was committed against a victim because of the victim's race, color, religion, nationality, or country of origin.
(18) The defendant does not support the defendant's family.
(18a) The defendant has previously been adjudicated delinquent for an offense that would be a Class A, B1, B2, C, D, or E felony if committed by an adult.
(19) The serious injury inflicted upon the victim is permanent and debilitating.
(20) Any other aggravating factor reasonably related to the purposes of sentencing.

Evidence necessary to prove an element of the offense shall not be used to prove any factor in aggravation, and the same item of evidence shall not be used to prove more than one factor in aggravation. Evidence necessary to establish that an enhanced sentence is required under G.S. 15A-1340.16A may not be used to prove any factor in aggravation.

The judge shall not consider as an aggravating factor the fact that the defendant exercised the right to a jury trial.

Notwithstanding the provisions of subsection (a1) of this section, the determination that an aggravating factor under G.S. 15A-1340.16(d)(18a) is present in a case shall be made by the court, and not by the jury. That determination shall be made in the sentencing hearing.

(e) Mitigating Factors. – The following are mitigating factors:
(1) The defendant committed the offense under duress, coercion, threat, or compulsion that was insufficient to constitute a defense but significantly reduced the defendant's culpability.

(2) The defendant was a passive participant or played a minor role in the commission of the offense.
(3) The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.
(4) The defendant's age, immaturity, or limited mental capacity at the time of commission of the offense significantly reduced the defendant's culpability for the offense.
(5) The defendant has made substantial or full restitution to the victim.
(6) The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.
(7) The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
(8) The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
(9) The defendant could not reasonably foresee that the defendant's conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
(10) The defendant reasonably believed that the defendant's conduct was legal.
(11) Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
(12) The defendant has been a person of good character or has had a good reputation in the community in which the defendant lives.
(13) The defendant is a minor and has reliable supervision available.
(14) The defendant has been honorably discharged from the United States armed services.
(15) The defendant has accepted responsibility for the defendant's criminal conduct.
(16) The defendant has entered and is currently involved in or has successfully completed a drug treatment program or an alcohol treatment program subsequent to arrest and prior to trial.
(17) The defendant supports the defendant's family.
(18) The defendant has a support system in the community.
(19) The defendant has a positive employment history or is gainfully employed.
(20) The defendant has a good treatment prognosis, and a workable treatment plan is available.
(21) Any other mitigating factor reasonably related to the purposes of sentences."

SECTION 2. G.S. 15A-1340.14 reads as rewritten:

"**§ 15A-1340.14. Prior record level for felony sentencing.**

(a) Generally. – The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. – Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of this subsection. The State must provide a defendant with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. – The prior record levels for felony sentencing are:

(1) Level I – 0 points.

(2) Level II – At least 1, but not more than 4 points.

(3) Level III – At least 5, but not more than 8 points.

(4) Level IV – At least 9, but not more than 14 points.

(5) Level V – At least 15, but not more than 18 points.

(6) Level VI – At least 19 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. – For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. – Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. – A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's

full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1."

SECTION 3. G.S. 15A-924(a) is amended by adding a new subdivision to read:

"(a) A criminal pleading must contain:

(1) The name or other identification of the defendant but the name of the defendant need not be repeated in each count unless required for clarity.

(2) A separate count addressed to each offense charged, but allegations in one count may be incorporated by reference in another count.

(3) A statement or cross reference in each count indicating that the offense charged therein was committed in a designated county.

(4) A statement or cross reference in each count indicating that the offense charged was committed on, or on or about, a designated date, or during a designated period of time. Error as to a date or its omission is not ground for dismissal of the charges or for reversal of a conviction if time was not of the essence with respect to the charge and the error or omission did not mislead the defendant to his prejudice.

(5) A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant's commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation. When the pleading is a criminal summons, warrant for arrest, or magistrate's order, or statement of charges based thereon, both the statement of the crime and any information showing probable cause which was considered by the judicial official and which has been furnished to the defendant must be used in determining whether the pleading is sufficient to meet the foregoing requirement.

(6) For each count a citation of any applicable statute, rule, regulation, ordinance, or other provision of law alleged therein to have been violated. Error in the citation or its omission is not ground for dismissal of the charges or for reversal of a conviction.

(7) A statement that the State intends to use one or more aggravating factors under G.S. 15A-1340.16(d)(20), with a plain and concise

factual statement indicating the factor or factors it intends to use under the authority of that subdivision."

SECTION 4. Article 58 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-1022.1. Procedure in accepting admissions of the existence of aggravating factors in felonies.**

(a) Before accepting a plea of guilty or no contest to a felony, the court shall determine whether the State intends to seek a sentence in the aggravated range. If the State does intend to seek an aggravated sentence, the court shall determine which factors the State seeks to establish. The court shall determine whether the State seeks a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7). The court shall also determine whether the State has provided the notice to the defendant required by G.S. 15A-1340.16(a6) or whether the defendant has waived his or her right to such notice.

(b) In all cases in which a defendant admits to the existence of an aggravating factor or to a finding that a prior record level point should be found under G.S. 15A-1340.14(b)(7), the court shall comply with the provisions of G.S. 15A-1022(a). In addition, the court shall address the defendant personally and advise the defendant that:

(1) He or she is entitled to have a jury determine the existence of any aggravating factors or points under G.S. 15A-1340.14(b)(7); and

(2) He or she has the right to prove the existence of any mitigating factors at a sentencing hearing before the sentencing judge.

(c) Before accepting an admission to the existence of an aggravating factor or a prior record level point under G.S. 15A-1340.14(b)(7), the court shall determine that there is a factual basis for the admission, and that the admission is the result of an informed choice by the defendant. The court may base its determination on the factors specified in G.S. 15A-1022(c), as well as any other appropriate information.

(d) A defendant may admit to the existence of an aggravating factor or to the existence of a prior record level point under G.S. 15A-1340.14(b)(7) before or after the trial of the underlying felony.

(e) The procedures specified in this Article for the handling of pleas of guilty are applicable to the handling of admissions to aggravating factors and prior record points under G.S. 15A-1340.14(b)(7), unless the context clearly indicates that they are inappropriate."

SECTION 5. This act is effective when it becomes law. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

House Pages

Name Of Committee: Jud. IV Date: 4/05/05

1. Name: Richard Long
   County: Union
   Sponsor: Curtis Blackwood
2. Name: Matthew Setzer
   County: Catawba
   Sponsor: Mitchell Setzer
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

John Madler
Sentencing

Jim Drennan,
Inst. of Gov't

Greg
Stahl
N.C.

Matthew
Staples
Cary H. S.

Sgt-At-Arms

1. Name: Linda Fuller
2. Name: Earl Coker
3. Name: _____
4. Name: _____
5. Name: _____

10:00 AM
Rm 415 Susan x 35781

VISITOR REGISTRATION SHEET

Judiciary IV — 4-5-05
Name of Committee — Date 10AM

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
John Madler	NC Sentencing Commission
Jim Drennan	Institute of Government
Takeeta Peddy	[illegible]
Matt Staples	Job Shadow to Rep. Weiss
Jeff Hunt	CONF OF DA's
Patsy A. Young	ACLU
Joe Swift	NCCCL
George Sherrill	AOC
Tracy Little	DOC

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, April 12, 2005

The House Committee on Judiciary IV met on Tuesday, April 12, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bill Culpepper, Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff counselors Trina Griffin, Jennifer McGinnis and Steve Rose and Dianna Jessup. Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss recognized Representative Justus, primary sponsor of HB 878 – CONFERENCE OF CLERKS OF SUPERIOR COURT, to speak on the bill. Representative Glazier moved to adopt the Proposed Committee Substitute for discussion; the motion was adopted. Mr. Tommy Thompson, Clerk of Court of Henderson County, answered questions from the members. He said clerks of court now meet twice a year, and at their last meeting the 76 attendees voted unanimously in favor of a formal organization. The Institute of Government and the Administrative Office of the Courts provide training programs at their meetings. Representative Glazier moved that the Proposed Committee Substitute for House Bill 878 be given a favorable report, unfavorable to the original bill. The motion was adopted.

Chairman Weiss introduced the next item on the agenda, HB 801 - CHILD CUSTODY/GUARDIANSHIP JURISDICTION. The motion by Representative Parmon to adopt the Proposed Committee Substitute for discussion was adopted. Representative Glazier, a primary sponsor, spoke on the bill. Ms. McGinnis, staff counsel, was asked to explain the bill. Discussion followed with Representative Margaret Dickson, a primary sponsor, also speaking on the bill. Professor Janet Mason, Institute of Government, and Ms. Chris Howell, counsel for Department of Health and Human Services, answered questions asked by members. Representative Parmon moved for a report favorable to the Proposed Committee Substitute, unfavorable to the original bill. The motion was adopted.

There being no further business, the meeting was adjourned at 10:35 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Committee Reports – HB 878 & HB 801, Agenda, HB 878, Bill Analysis, Committee Substitute; HB 801, Bill Analysis, Committee Substitute, Listing of Pages, Visitor Registration List

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 878 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE CONFERENCE OF CLERKS OF SUPERIOR COURT.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

X☐ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

rptd 4/13/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 801 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

X☐ With a favorable report as to the committee substitute bill, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday April 12, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 878 – CONFERENCE OF CLERKS OF SUPERIOR COURT
Representative Justus

HB 801 – CHILD CUSTODY/GUARDIANSHIP JURISDICTION
Representatives Glazier, Alexander, and Dickson

ADJOURNMENT

H 1

HOUSE BILL 878*

Short Title: Conference of Clerks of Superior Court. (Public)

Sponsors: Representatives Justus; and Faison.

Referred to: Judiciary IV.

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONFERENCE OF CLERKS OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

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

"**SUBCHAPTER XV. CONFERENCE OF CLERKS OF SUPERIOR COURT.**

"Article 63.

"Conference of Clerks of Superior Court.

"**§ 7A-805. Establishment and purpose.**

There is created the Conference of Clerks of Superior Court of North Carolina, of which each clerk of superior court is a member. The purpose of the Conference is to assist in improving the administration of justice in North Carolina by coordinating the efforts of the various clerks of superior court, by assisting them in the administration of their offices, and by exercising the powers and performing the duties provided for in this Article.

"**§ 7A-806. Annual meetings; organization; election of officers.**

(a) Annual Meetings. – The Conference shall meet each summer and winter at a time and place selected by the President of the Conference.

(b) Election of Officers. – Officers of the Conference are a President, two Vice Presidents, a Secretary, a Treasurer, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual summer conference and take office on July 1 immediately following their election.

(c) Executive Committee. – The Executive Committee of the Conference consists of the President, the two Vice Presidents, the Secretary, the Treasurer, and seven other members of the Conference. One of these seven members shall be the immediate past president if there is one and that past president continues to be a member.

(d) Organization and Functioning; Bylaws. – The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws shall state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws shall set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend. – The President or the Executive Committee may call a meeting of the Conference upon 10 days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. A member should attend each meeting of the Conference and the Executive Committee of which he is given notice. Members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees.

"**§ 7A-807. Powers of Conference.**

(a) The Conference may:

(1) Cooperate with citizens and other public and private agencies to promote the effective administration of justice.

(2) Develop advisory manuals to assist in the organization and administration of their offices, case management, calendaring, case tracking, filing, and office procedures.

(3) Work with the cooperation of the Administrative Office of the Courts and the Institute of Government of the School of Government at UNC-Chapel Hill to provide education and training programs for prosecutors and staff.

(b) The Conference may not adopt rules pursuant to Chapter 150B of the General Statutes.

"**§ 7A-414. Executive Secretary; clerical support.**

The Conference may employ an executive secretary and any necessary supporting staff to assist it in carrying out its duties."

SECTION 2. The organizational meeting of the Conference of Clerks of Superior Court shall be convened by the Director of the Administrative Office of the Courts as soon as feasible. Officers elected at that organizational meeting shall serve until their successors take office July 1, 2006.

SECTION 3. This act becomes effective July 1, 2005.

House Bill 878:
Conference of Clerks of Superior Court

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Rep. Justus
Date:	April 12, 2005	**Summary by:**	Trina Griffin
Version:	PCS for First Edition H878-CSSV-9		Committee Counsel

SUMMARY: ***House Bill 878 creates the Conference of Clerks of Superior Court for the purpose of improving the administration of justice by coordinating the efforts of the various clerks, by assisting them in the administration of their offices, and by providing education and training programs for clerks and their staff.*** ***The PCS makes one technical correction.***

CURRENT LAW: Clerks of superior court may elect to become members of the North Carolina Association of Clerks of Superior Court, which is a voluntary organization that offers educational and training opportunities for clerks.

BILL ANALYSIS: House Bill 878 would establish the Conference of Clerks of Superior Court, the framework of which is patterned after the legislation establishing the Conference of District Attorneys. Under this provision, all clerks would become members.

Purpose. – The purpose of the Conference would be to assist in improving the administration of justice by coordinating the efforts of the various clerks and by assisting them in the administration of their offices.

Annual meetings; election of officers. – The bill authorizes the Conference to elect officers and hold meetings twice a year, which the Association currently does.

Bylaws. – The bylaws would provide for the organization and functioning of the Conference, including the number of members required to constitute a quorum.

Calling Meetings. – The bill authorizes the President or the Executive Committee to call a meeting of the Conference upon 10 days' notice, absent a waiver signed by three-fourths of the members. Members would be entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees.

Powers of Conference. – The Conference may (1) cooperate with citizens and other agencies to promote the effective administration of justice; (2) develop advisory manuals to assist in the organization and administration of their offices, case management, calendaring, case tracking, filing, and office procedures; and (3) work with the AOC and the IOG to provide education and training programs for the clerks of superior court and their staff. The Conference would also have the authority to employ necessary support staff in order to carry out its duties.

The Conference would not have any rule-making authority.

EFFECTIVE DATE: The bill would become effective July 1, 2005.

H0878e1-SMSV-PCS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 878*
PROPOSED COMMITTEE SUBSTITUTE H878-PCS60332-SV-9

Short Title: Conference of Clerks of Superior Court. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE CONFERENCE OF CLERKS OF SUPERIOR COURT.

The General Assembly of North Carolina enacts:

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

"**SUBCHAPTER XV. CONFERENCE OF CLERKS OF SUPERIOR COURT.**

"Article 63.

"Conference of Clerks of Superior Court.

"**§ 7A-805. Establishment and purpose.**

There is created the Conference of Clerks of Superior Court of North Carolina, of which each clerk of superior court is a member. The purpose of the Conference is to assist in improving the administration of justice in North Carolina by coordinating the efforts of the various clerks of superior court, by assisting them in the administration of their offices, and by exercising the powers and performing the duties provided for in this Article.

"**§ 7A-806. Annual meetings; organization; election of officers.**

(a) Annual Meetings. – The Conference shall meet each summer and winter at a time and place selected by the President of the Conference.

(b) Election of Officers. – Officers of the Conference are a President, two Vice Presidents, a Secretary, a Treasurer, and other officers from among its membership that the Conference may designate in its bylaws. Officers are elected for one-year terms at the annual summer conference and take office on July 1 immediately following their election.

(c) Executive Committee. – The Executive Committee of the Conference consists of the President, the two Vice Presidents, the Secretary, the Treasurer, and seven other members of the Conference. One of these seven members shall be the immediate past president if there is one and that past president continues to be a member.

(d) Organization and Functioning; Bylaws. – The bylaws may provide for the organization and functioning of the Conference, including the powers and duties of its officers and committees. The bylaws shall state the number of members required to constitute a quorum at any meeting of the Conference or the Executive Committee. The bylaws shall set out the procedure for amending the bylaws.

(e) Calling Meetings; Duty to Attend. – The President or the Executive Committee may call a meeting of the Conference upon 10 days' notice to the members, except upon written waiver of notice signed by at least three-fourths of the members. A member should attend each meeting of the Conference and the Executive Committee of which he is given notice. Members are entitled to reimbursement for travel and subsistence expenses at the rate applicable to State employees.

"**§ 7A-807. Powers of Conference.**

(a) The Conference may:

(1) Cooperate with citizens and other public and private agencies to promote the effective administration of justice.

(2) Develop advisory manuals to assist in the organization and administration of their offices, case management, calendaring, case tracking, filing, and office procedures.

(3) Work with the cooperation of the Administrative Office of the Courts and the Institute of Government of the School of Government at UNC-Chapel Hill to provide education and training programs for the clerks of superior court and their staff.

(b) The Conference may not adopt rules pursuant to Chapter 150B of the General Statutes.

"**§ 7A-808. Executive secretary; clerical support.**

The Conference may employ an executive secretary and any necessary supporting staff to assist it in carrying out its duties."

SECTION 2. The organizational meeting of the Conference of Clerks of Superior Court shall be convened by the Director of the Administrative Office of the Courts as soon as feasible. Officers elected at that organizational meeting shall serve until their successors take office July 1, 2006.

SECTION 3. This act becomes effective July 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 801

Short Title:	Child Custody/Guardianship Jurisdiction.	(Public)
Sponsors:	Representatives Glazier, Alexander, Dickson (Primary Sponsors); Bell, Harrison, and Insko.	
Referred to:	Judiciary IV.	

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200 is amended by adding the following new subsections to read:

"(c) When the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

(1) Any other civil action in this State in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated pursuant to subsection (d) of this section or the judge in the juvenile proceeding enters an order dissolving the stay.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to exercise jurisdiction in the juvenile proceeding.

(d) Notwithstanding G.S. 50-13.5(f), the judge assigned to a juvenile proceeding may order that any civil action or claim for custody filed in the district be consolidated with the juvenile proceeding. If a civil action or claim for custody of the juvenile is filed in another district, the judge assigned to the juvenile proceeding, for good cause and after consulting with the judge in the other district, may: (i) order that the civil action or claim for custody be transferred to the district in which the juvenile proceeding is filed;

or (ii) order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the district in which the civil action or claim is filed. The judge in the juvenile proceeding may also proceed in the juvenile proceeding while the civil action or claim remains stayed or dissolve the stay of the civil action or claim and stay the juvenile proceeding pending a resolution of the civil action or claim."

SECTION 2. G.S. 7B-201 reads as rewritten:

"**§ 7B-201. Retention and termination of jurisdiction.**

(a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.

(b) When the court's jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise. Termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding, however, shall not affect any of the following:

(1) A civil custody order entered pursuant to G.S. 7B-911.

(2) An order terminating parental rights.

(3) A pending action to terminate parental rights, unless the court orders otherwise.

(4) Any proceeding in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.

(5) The court's jurisdiction in relation to any new abuse, neglect, or dependency petition that is filed."

SECTION 3. G.S. 7B-402 reads as rewritten:

"**§ 7B-402. Petition.**

(a) 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~~ custodian, and ~~shall allege the facts which~~allegations of facts sufficient to invoke jurisdiction over the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 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.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

(c) 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 4. G.S. 7B-600 is amended by adding the following new subsection to read:

"(d) The court shall retain jurisdiction in the case until the guardianship is terminated, unless the court's jurisdiction terminates earlier as a matter of law."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-911. Civil child-custody order.**

(a) After making proper findings at a dispositional hearing or any subsequent hearing, the court on its own motion or the motion of a party may award custody of the juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7, as provided herein, and terminate the court's jurisdiction in the juvenile proceeding.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is

"(d) The court shall retain jurisdiction in the case until the guardianship is terminated, unless the court's jurisdiction terminates earlier as a matter of law."

SECTION 5. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-911. Civil child-custody order.**

(a) After making proper findings at a dispositional hearing or any subsequent hearing, the court on its own motion or the motion of a party may award custody of the juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7, as provided herein, and terminate the court's jurisdiction in the juvenile proceeding.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is

HOUSE BILL 801:
Child Custody/Guardianship Jurisdiction

BILL ANALYSIS

Committee:	Judiciary IV	**Introduced by:**	Reps. Glazier, Alexander, Dickson
Date:	April 12, 2005		
Version:	Proposed Committee Substitute H801-CSRI-5	**Summary by:**	Jennifer McGinnis Committee Counsel from summary prepared by R. Erika Churchill, Staff Attorney

SUMMARY: ***The bill would make various amendments to the juvenile code and Chapter 50 to allow the courts to address the issue of conflicting jurisdiction in cases involving juveniles.***

CURRENT LAW: Persons seeking custody of a juvenile may initiate a civil action under Chapter 50 of the General Statutes. The department of social services in each county is responsible for investigating allegations of abuse, neglect, and dependency involving juveniles and has the authority to initiate a civil action in court to protect the juvenile if necessary under Subpart I of Chapter 7B of the General Statutes. The two legal cases are separate and apart, even though one child may be the subject of both actions. The statutes are silent on which court takes precedence if a child is a subject of both types of cases, or what options are available when the juvenile court terminates its jurisdiction.

BILL ANALYSIS:

Section 1.: The bill would add two new subsections to G.S. 7B-200, Jurisdiction, to provide the following:

- When a juvenile petition is filed, any other civil custody action in the State is automatically stayed, unless the actions are consolidated, or the court in the juvenile proceeding lifts the stay.
- If an order entered by the court in a juvenile proceeding and an order in a civil custody action conflict, the order in the juvenile proceeding controls so long as the juvenile court continues to exercise jurisdiction in the juvenile proceeding.
- If the two actions are in the same judicial district the court in the juvenile proceeding may order that the civil action for custody be consolidated with the juvenile proceeding.
- If the two actions are in different judicial districts, the court in the juvenile proceeding, for good cause and after consulting with the court in the other district, may do any of the following:
    - Transfer the civil action to the county in which the juvenile proceeding is filed.
    - Change the venue of the juvenile proceeding to that of the civil action.
    - Proceed in the juvenile action while the civil action remains stayed.
    - Stay the juvenile proceeding and allow the civil action to proceed.

Section 2.: The bill would add a new subsection to G.S. 7B-201, Retention of Jurisdiction, to provide the following:

- The court in a juvenile proceeding may not modify or enforce any order previously entered in the proceeding after the court's jurisdiction terminates.

- That the legal status of the juvenile and the custodial rights of the parties return to pre-petition status when the court's jurisdiction terminates, unless an order is filed in a separate civil action. This termination does not affect any of the following:
    - A civil custody order entered pursuant to G.S. 7B-911.
    - An order terminating parental rights (TPR).
    - A pending action for TPR, unless the court orders otherwise.
    - An action in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.
    - Any new petition regarding the juvenile that is filed alleging abuse/neglect/dependency.

Section 3.: The bill would clarify that the petitioner, the local department of social services, is to attach the affidavit regarding the status of the juvenile that is the subject of the petition, to any petition that is filed. This requirement is already current law under G.S. 50A. The bill would place the same requirement in the statute governing petitions. The bill also makes a drafting change to update the language.

Section 4.: The bill would add a new section to Article 9, Dispositions, of the Juvenile Code, for abuse/neglect/dependency. The new section would allow the court to enter an order that awards civil custody of the juvenile to a parent or other appropriate person, and terminates the court's jurisdiction in the juvenile proceeding. When entering such an order, the Court shall cause the order to be filed in an existing civil custody action relating to the juvenile if one is pending, or if not, instruct the clerk to treat the order as the initiation of a civil action for custody. The court may enter the civil custody order and terminate its jurisdiction only if:

- The court makes findings and conclusions that support the entry of the custody order under Chapter 50.
- In a separate order terminating the juvenile court's jurisdiction, the court finds:
    - The juvenile's status and the issues are in the nature of a private custody agreement and there is no need for continued State involvement on behalf of the juvenile.
    - At least 6 months have passed since the court determined that the custody placement is the permanent plan for the juvenile.

Section 5.: The bill would make a conforming change to the civil custody action statutes to provide that the civil action is stayed when the juvenile that is the subject of the civil action is also the subject of an abuse/neglect/dependency proceeding.

BACKGROUND:

In 2003, the General Assembly enacted S.L. 2003-81, which directed the Administrative Office of the Courts (AOC), in consultation with the Department of Health and Human Services, to establish a pilot program in the Twelfth Judicial District to address the issue of conflicting child custody orders. The act provided that under the pilot program, when a court obtained jurisdiction over a juvenile as the result of a petition alleging that the juvenile was abused, neglected, or dependent:

- The court in the juvenile proceeding could stay any other civil action in the State in which the custody of the juvenile was an issue.
- If an order entered in the juvenile proceeding and an order entered in another civil custody action conflicted, the order in the juvenile proceeding would control as long as the court continued to retain jurisdiction in the juvenile proceeding.

- The court in the juvenile proceeding could order that any civil action or claim for custody filed in the pilot judicial district be consolidated with the juvenile proceeding.
- If a civil action or claim for custody was filed in a district other than the pilot judicial district, then the court in the juvenile proceeding could, after consulting with the court in the other district, order that the civil action or claim for custody be transferred to the pilot judicial district or could order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the other district.
- The court could establish a mechanism for determining the legal status of a juvenile after jurisdiction of the juvenile court terminated, including a determination as to who would have custody of the juvenile and under what circumstances custody could subsequently be changed.

The Act also directed the AOC to evaluate the pilot program and report its findings and recommendations to the 2005 General Assembly prior to its convening. The report dated January 27, 2005, recommended that the provisions of the S.L. 2003-381 be enacted statewide.

CHANGES TO BILL IN PCS: In Section 1 of the bill, the phrase "judge assigned to" is replaced with the word "court" in several places, and the word "district" is replaced with the word "county" in 2 places. Section 4 of the original bill, pertaining to guardianship, is deleted. Section 8 of the original bill, concerning the effective date, provided that the act would apply only to petitions filed on or after October 1, 2005. This section now provides that the act will apply to juvenile proceedings and civil actions filed **or pending** on or after that date.

EFFECTIVE DATE: The act is effective October 1, 2005 and applies to juvenile proceedings and civil actions filed on or after that date.

HB801-SMRI-001

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 801
PROPOSED COMMITTEE SUBSTITUTE H801-PCS60336-RI-5

Short Title: Child Custody/Guardianship Jurisdiction. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A PROCEDURE TO RESOLVE THE ISSUE OF CONFLICTING CHILD CUSTODY ORDERS; TO CLARIFY THE EFFECT OF TERMINATING JURISDICTION IN CERTAIN JUVENILE CASES; TO GIVE THE COURT AUTHORITY TO CONVERT A JUVENILE COURT CUSTODY ORDER INTO A PERMANENT CUSTODY ORDER UNDER CHAPTER 50 OF THE GENERAL STATUTES; AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-200 is amended by adding the following new subsections to read:

"(c) When the court obtains jurisdiction over a juvenile as the result of a petition alleging that the juvenile is abused, neglected, or dependent:

(1) Any other civil action in this State in which the custody of the juvenile is an issue is automatically stayed as to that issue, unless the juvenile proceeding and the civil custody action or claim are consolidated pursuant to subsection (d) of this section or the court in the juvenile proceeding enters an order dissolving the stay.

(2) If an order entered in the juvenile proceeding and an order entered in another civil custody action conflict, the order in the juvenile proceeding controls as long as the court continues to exercise jurisdiction in the juvenile proceeding.

(d) Notwithstanding G.S. 50-13.5(f), the court in a juvenile proceeding may order that any civil action or claim for custody filed in the district be consolidated with the juvenile proceeding. If a civil action or claim for custody of the juvenile is filed in another district, the court in the juvenile proceeding, for good cause and after consulting with the court in the other district, may: (i) order that the civil action or claim for custody be transferred to the county in which the juvenile proceeding is filed; or (ii)

order a change of venue in the juvenile proceeding and transfer the juvenile proceeding to the county in which the civil action or claim is filed. The court in the juvenile proceeding may also proceed in the juvenile proceeding while the civil action or claim remains stayed or dissolve the stay of the civil action or claim and stay the juvenile proceeding pending a resolution of the civil action or claim."

SECTION 2. G.S. 7B-201 reads as rewritten:

"**§ 7B-201. Retention and termination of jurisdiction.**

(a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first.

(b) When the court's jurisdiction terminates, whether automatically or by court order, the court thereafter shall not modify or enforce any order previously entered in the case, including any juvenile court order relating to the custody, placement, or guardianship of the juvenile. The legal status of the juvenile and the custodial rights of the parties shall revert to the status they were before the juvenile petition was filed, unless applicable law or a valid court order in another civil action provides otherwise. Termination of the court's jurisdiction in an abuse, neglect, or dependency proceeding, however, shall not affect any of the following:

(1) A civil custody order entered pursuant to G.S. 7B-911.

(2) An order terminating parental rights.

(3) A pending action to terminate parental rights, unless the court orders otherwise.

(4) Any proceeding in which the juvenile is alleged to be or has been adjudicated undisciplined or delinquent.

(5) The court's jurisdiction in relation to any new abuse, neglect, or dependency petition that is filed."

SECTION 3. G.S. 7B-402 reads as rewritten:

"**§ 7B-402. Petition.**

(a) 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~~ custodian, and ~~shall allege the facts which~~allegations of facts sufficient to invoke jurisdiction over the juvenile. A person whose actions resulted in a conviction under G.S. 14-27.2 or G.S. 14-27.3 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.

(b) The petition, or an affidavit attached to the petition, shall contain the information required by G.S. 50A-209.

(c) 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 4. Article 9 of Chapter 7B of the General Statutes is amended by adding a new section to read:

"**§ 7B-911. Civil child-custody order.**

(a) After making proper findings at a dispositional hearing or any subsequent hearing, the court on its own motion or the motion of a party may award custody of the juvenile to a parent or other appropriate person pursuant to G.S. 50-13.1, 50-13.2, 50-13.5, and 50-13.7, as provided in this section, and terminate the court's jurisdiction in the juvenile proceeding.

(b) When the court enters a custody order under this section, the court shall either cause the order to be filed in an existing civil action relating to the custody of the juvenile or, if there is no other civil action, instruct the clerk to treat the order as the initiation of a civil action for custody.

If the order is filed in an existing civil action and the person to whom the court is awarding custody is not a party to that action, the court shall order that the person be joined as a party and that the caption of the case be changed accordingly. The order shall resolve any pending claim for custody and shall constitute a modification of any custody order previously entered in the action.

If the court's order initiates a civil action, the court shall designate the parties to the action and determine the most appropriate caption for the case. The civil filing fee is waived unless the court orders one or more of the parties to pay the filing fee for a civil action into the office of the clerk of superior court. The order shall constitute a custody determination, and any motion to enforce or modify the custody order shall be filed in the newly created civil action in accordance with the provisions of Chapter 50 of the General Statutes. The Administrative Office of the Courts may adopt rules and shall develop and make available appropriate forms for establishing a civil file to implement this section.

(c) The court may enter a civil custody order under this section and terminate the court's jurisdiction in the juvenile proceeding only if:

(1) In the civil custody order the court makes findings and conclusions that support the entry of a custody order in an action under Chapter 50 of the General Statutes or, if the juvenile is already the subject of a custody order entered pursuant to Chapter 50, makes findings and conclusions that support modification of that order pursuant to G.S. 50-13.7; and

(2) In a separate order terminating the juvenile court's jurisdiction in the juvenile proceeding, the court finds:

a. That there is not a need for continued State intervention on behalf of the juvenile through a juvenile court proceeding; and

b. That at least six months have passed since the court made a determination that the juvenile's placement with the person to whom the court is awarding custody is the permanent plan for the juvenile, though this finding is not required if the court is awarding custody to a parent or to a person with whom the child was living when the juvenile petition was filed."

SECTION 5. G.S. 50-13.1 is amended by adding a new subsection to read:

"(i) If the child whose custody is the subject of an action under this Chapter also is the subject of a juvenile abuse, neglect, or dependency proceeding pursuant to

Subchapter 1 of Chapter 7B of the General Statutes, then the custody action under this Chapter is stayed as provided in G.S. 7B-200."

SECTION 6. This act becomes effective October 1, 2005, and applies to juvenile proceedings and civil actions pending or filed on or after that date.

House Pages

Name Of Committee: Jud. IV Date: 4/12/05

1. Name: Conrad Patterson
   County: Franklin
   Sponsor: Thomas Wilder
2. Name: John Melvin
   County: Wake
   Sponsor: Lucy Allen
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Janet Mason

Cheryl Howell

DHHS

Sgt-At-Arms

1. Name: Linda Fuller
2. Name: Brad Barefoot
3. Name: James Worth
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

Jud. IV — 4/12/05

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE ASSISTANT

NAME	FIRM OR AGENCY
Janet Mason	Institute of Government, UNC-CH
Thomas D. Thompson	Clerk of Superior Court Henderson Co.
Shirley Sanderson	" " " Wilkes Co-Resid. ACSC
Jerry Roten	" " " Ashe
JAMES C. STANFORD	" " " Orange County
Jane Smith	DHHS/DSS
David Aldrin	DHHS/DSS
Cheryl Howell	Institute of Government UNC-CH
J. Mark Pegram	Clerk of Court Rockingham Co
MIKE McARTHUR	CLERK OF SUPERIOR COURT HOWAN COUNTY
Brenda Tucker	Clerk of Superior Court New Hanover
Archie L. Smith III	" " " " DURHAM
[illegible]	NC AG / Div SS

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, April 19, 2005

The House Committee on Judiciary IV met on Tuesday, April 19, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Beverly Earle, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff counselors Trina Griffin, Jennifer McGinnis and Steve Rose and Dianna Jessup. Representative Margaret Dickson, a primary sponsor of HB 723 was also present. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting. She then introduced Representative Glazier, a Primary Sponsor, to speak on HB 723 - UNC/CRIMINAL RECORD CHECKS/FEE. Representative Dickson also spoke on the need for the bill. Ms. McGinnis, staff, then went through the bill.

Representative Earle raised the question of standardization in hiring within the university system. Mark Flemming, a representative of the university system, said that hiring is decentralized with each campus having its own hiring procedures making it possible that an applicant could be hired by one institution but not meet the requirements of another institution within the university system. Rep. Ray asked if there is a centralized system for record checks storage and retrieval. The question of who pays for the record check was also raised. A fiscal note on the bill will be forthcoming.

Representative Weiss appointed a sub-committee to look into the questions and concerns surrounding the bill. Members of the sub-committee are Representatives Martin, chair; Ray and Glazier.

There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 723, Bill Analysis, Listing of Pages, Visitor Registration.

REVISED AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday April 19, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

HB 723 – UNC/CRIMINAL RECORD CHECKS/FEE.-AB
Representatives Glazier and Dickson.

ADJOURNMENT

H 1

HOUSE BILL 723

Short Title: UNC/Criminal Record Checks/Fee.-AB (Public)

Sponsors: Representatives Glazier, Dickson (Primary Sponsors); and Insko.

Referred to: Judiciary IV, if favorable, Finance.

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.2A. Criminal record checks of university personnel.**

(a) The Department of Justice may provide a criminal record check to administrators of The University of North Carolina, or of any of its institutions or entities, concerning a person who has applied for employment or a promotion in The University of North Carolina System, or its institutions or entities, if the applicant consents to the record check. The Department may also provide a criminal record check to The University of North Carolina by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The information shall be kept confidential as provided in G.S. 116-40.5A.

(b) University law enforcement officers who are certified DCI operators may conduct the criminal record check, to the extent permitted by law. For a criminal record check performed by the Department of Justice, the Department shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c) The Department of Justice shall adopt rules to implement this section."

SECTION 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-40.5A. University personnel criminal history checks.**

(a) As used in this section:

(1) "Criminal history" means a county, State, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties for The University of North Carolina. Such crimes include the following crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 4A, Prohibited Secret Societies and Activities; Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 9, Hazing; Article 10, Kidnapping and Abduction; Article 11, Abortion and Kindred Offenses; 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 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 27A, Sex Offender and Public Protection Registration Programs; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36, Offenses Against the Public Safety; Article 36A, Riots and Civil Disorders; Article 36B, Nuclear, Biological, or Chemical Weapons of Mass Destruction; Article 39, Protection of Minors; Article 47, Cruelty to Animals; Article 51, Protection of Athletic Contests; Article 52, Miscellaneous Police Regulations; Article 58, Records, Tapes and Other Recorded Devices; and Article 60, Computer-Related Crime.

Such 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.

In addition to the crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "University personnel" means any:

a. Applicant for employment or promotion with The University of North Carolina or any of its institutions or entities whether full-time or part-time, or

b. Independent contractor or employee of an independent contractor of The University of North Carolina, or any of its institutions or entities, if the independent contractor carries out duties customarily performed by university personnel, whether paid with federal, State, local, or other funds.

(3) "University" means The University of North Carolina, or any of its institutions or entities, including the University of North Carolina Health Care System.

(b) The Board of Trustees of each constituent institution of the University shall adopt a policy on whether and under what circumstances an applicant for a position or promotion at that constituent institution shall be required to be checked for a criminal history before the applicant is offered an unconditional job or promotion. The Board of Governors of The University of North Carolina shall adopt such a policy for the General Administration, and the Board of Directors of the UNC Health Care System shall adopt a policy for the Health Care System. Each constituent institution and other entities of the University shall apply its policy uniformly in requiring applicants for University positions or promotions to be checked for a criminal history. The University may employ an applicant conditionally while the University is checking the person's criminal history and making a decision based on the results of the check.

The University shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the University the criminal history from the State and National Repositories of Criminal Histories of any applicant for a University position or promotion in the University, or any of its institutions or entities, which requires a criminal history check. The University shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the University, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The University shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The University shall not require an applicant to pay for being fingerprinted.

(d) The University shall review the criminal history it receives on a person. The University shall determine whether the results of the review indicate that the person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a University employee and shall use the information when making employment decisions and decisions with regard to independent contractors. The University shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The University may delegate any of the duties in this section to one or more of its administrators.

(e) All the information received by the University through the checking of the criminal history in accordance with this section is privileged information and is not a

public record but is for the exclusive use of the University. The University may destroy the information after it is used for the employment purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of the University, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

(g) Any applicant for employment or promotion who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 723:
UNC/Criminal Record Checks/Fee.-AB

DRAFT FOR REVIEW ONLY

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	April 27, 2005
Introduced by:	Reps. Glazier, Dickson	**Summary by:**	Jennifer McGinnis
Version:	First Edition H723-CSRI-7		Committee Counsel

SUMMARY: House Bill 723 would authorize the Department of Justice (DoJ) to provide the University of North Carolina (UNC) criminal record checks for applicants for employment and promotion. The bill would become effective December 1, 2005, and apply to offenses committed on or after that date.

CURRENT LAW: Under current State law, criminal record check provisions exist for residential school personnel (G.S. 143B-146.16), employees of local boards of education (G.S. 115C-332), and employees of charter schools (G.S. 115C-238.29K). **The provisions of House Bill 723 are substantially similar to these existing statutes.**

PCS CHANGES TO ORIGINAL BILL: The PCS -

- Makes a change at lines 9 through 13 of the original bill to require that the Board of Governors adopt a policy to be applied uniformly to all constituent institutions regarding whether and under what circumstances criminal record checks will be required before an unconditional offer of employment or promotion is made at the constituent institutions. The original bill directed the Board of Trustees of each constituent institution to develop such a policy
- Deletes lines 20 and 21 of the original bill that prohibited the University from requiring an applicant to pay for a criminal history check.
- Deletes line 30 of the original bill that prohibited the University from requiring an applicant to pay for being fingerprinted.

BILL ANALYSIS:

Section 1.: The bill would add a new section to Chapter 114 of the General Statutes (Department of Justice) that would:

- Authorize DOJ to provide a criminal record check to UNC administrators concerning a person who has applied for employment or promotion in the UNC System, upon the applicant's consent.
- Authorize DOJ to provide a criminal record check to UNC by fingerprint card from National Repositories of Criminal Histories.
- Provide that the information obtained must be kept confidential.
- Provide that DoJ may charge a reasonable fee for conducting the criminal record check, not to exceed the actual cost of locating, editing, researching, and retrieving the information.
- Authorize certain University law enforcement officers, who are certified Division of Criminal Information-State Bureau of Investigation (DCI) operators, to conduct the criminal record check.

- Direct DoJ to adopt rules to implement the provisions.

Section 2.: The bill would add a new section to Chapter 116 of the General Statutes (Higher Education) that would:

- Provide that "criminal history" means a conviction of a crime, whether misdemeanor or felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill the his or her duties, and lists crimes included within definition.
- Provide that the term "University personnel" includes applicants for employment or promotion, and independent contractors who carry out duties customarily performed by university personnel.
- Require that the UNC Board of Governors adopt a policy regarding whether and under what circumstances criminal record checks will be required before an unconditional offer of employment or promotion is made and provide that the policy must be applied uniformly across the constituent institutions. The University would be permitted to employ an applicant conditionally while checking the applicant's criminal history and making a decision based on the results of the check.
- Include requirements regarding fingerprinting and obtaining consent forms. Provide that the University must consider refusal to consent to a check when making employment decisions and decisions with regard to independent contractors.
- Direct the University to determine whether the results of the check indicate that a person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that the person does not have the integrity or honesty to fulfill his or her duties. Direct the University to use the information when making employment decisions and make written findings in that regard.
- Provide that the results of the check are confidential and allow the University to destroy the information after one calendar year.
- Provide limitations on liability for the University and its employees.
- Make it a Class A1 misdemeanor to willfully furnish, supply, or give false information on an employment application that is the basis for a criminal record check. A Class A1 misdemeanor is punishable by 1 to 60 days of active, intermediate, or community punishment, assuming no prior convictions.

BACKGROUND: Currently, some campuses in the UNC System conduct pre-employment criminal conviction checks on prospective employees. Those that perform checks are using the Administrative Office of the Courts database, which contains only North Carolina convictions or are using automated databases in certain states that are available through commercial vendors.

EFFECTIVE DATE: The bill would become effective December 1, 2005, and apply to offenses committed on or after that date.

House Pages

Name Of Committee: JD IV Date: 04/19/05

1. Name: Peter S. Coogan
   County: Wake
   Sponsor: Eddins
2. Name: Haydon Witherspoon
   County: Mecklenburg
   Sponsor: Representative Black
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Jim Womack House Sgt-At-Arms
2. Name: Brad Barefoot House Sgt-At-Arms
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

Judiciary #4 — 4-19-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
R. Paul Wims	NCHBA
Mark Fleming	University
Colleen Kochanek	NC chiefs of Police

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, April 26, 2005

The House Committee on Judiciary IV met on Tuesday, April 26, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Bill Culpepper, Leo Daughtry, Beverly Earle, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff counselors Trina Griffin, Jennifer McGinnis, Steve Rose and Dianna Jessup. Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss asked Representative Glazier to chair the meeting since she is a primary sponsor on both of the bills on the agenda. Representative Glazier called on Representative Weiss to explain HB 1262 – AUTH. SOCIAL WORK BD. TO EMPLOY PERSONNEL. After brief discussion, Representative Earle moved for a report favorable to the bill. The motion was adopted.

Upon motion, the Proposed Committee Substitute for HB 1176, PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS, was adopted for discussion purposes. Representative Weiss then gave background on HB 1176. Ms.McGinnis, staff counsel, went through the bill noting changes in the Proposed Committee Substitute. Mr. Al Butler gave an explanation of the reasons for the bill and answered questions. Discussion followed. Representative Weiss offered an amendment to make a technical change. Representative Parmon moved that the amendment be rolled into a committee substitute and that the committee substitute for HB 1176 be given a favorable report, unfavorable to the original bill. The motion was adopted.

There being no further business, Representative Glazier adjourned the meeting at 10:30 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Committee Reports – HB 1262 & 1176, Agenda, HB 1262 & Bill Analysis; HB 1176, Bill Analysis, Amendment, Committee Substitute, Listing of Pages, Visitor Registration.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1262 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE NORTH CAROLINA SOCIAL WORK CERTIFICATION AND LICENSURE BOARD TO EMPLOY PERSONNEL NECESSARY TO CARRY OUT THE PROVISIONS OF THE SOCIAL WORK CERTIFICATION AND 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 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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1176 A BILL TO BE ENTITLED AN ACT TO INCREASE THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT ADDITIONAL TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday April 26, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 1262 – AUTH. SOCIAL WORK BD. TO EMPLOY PERSONNEL.
Representative Weiss

HB 1176 – PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.
Representatives Weiss, Glazier, Goodwin, and Harrison

ADJOURNMENT

H 1

HOUSE BILL 1262

Short Title:	Auth. Social Work Bd. to Employ Personnel.	(Public)
Sponsors:	Representative Weiss.	
Referred to:	Judiciary IV.	

April 18, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA SOCIAL WORK CERTIFICATION AND LICENSURE BOARD TO EMPLOY PERSONNEL NECESSARY TO CARRY OUT THE PROVISIONS OF THE SOCIAL WORK CERTIFICATION AND LICENSURE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90B-6 is amended by adding the following new subsection to read:

"(j) The Board shall have the power to employ or retain professional personnel, including legal counsel, subject to G.S. 114-2.3, or clerical or other special personnel deemed necessary to carry out the provisions of this Chapter."

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

HOUSE BILL 1262:
Auth. Social Work Bd. to Employ Personnel

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	April 26, 2005
Introduced by:	Rep. Weiss	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1262 authorizes the North Carolina Social Work Certification and Licensure Board to employ professional personnel, including private legal counsel, in order to carry out many of the Board's functions.***

CURRENT LAW: The Attorney General's Office is charged with representing all State departments, agencies, institutions, commissions, bureaus, or other organized activities of the State that receive support in whole or in part from the State. (G.S. 114-2(2)). However, certain boards and commissions may have the statutory authority, as part of their authorizing legislation, to employ private counsel, with the written permission of the Attorney General's Office.

Many boards and commissions have the authority to employ private counsel. Examples include the Medical Board, the Funeral Service Board, the Substance Abuse Professional Certification Board, the Board of Nursing, and the Veterinary Medical Board. In recent years, many occupational licensing boards amended their statutes to authorize the hiring professional personnel, as well as to authorize the hiring of an attorney specifically.

The Social Work Certification and Licensure Board is not authorized to employ private counsel and currently utilizes the services of the Attorney General, who has assigned a staff attorney to the Board. This attorney provides general advice to the Board and prosecutes hearings before the Board.

BILL ANALYSIS: House Bill 1262 authorizes the North Carolina Social Work Certification and Licensure Board to employ professional personnel, including legal counsel, subject to the written permission of the Attorney General's Office, or clerical or other special personnel deemed necessary to carry out the duties of the Board.

EFFECTIVE DATE: This act is effective when it becomes law.

BACKGROUND: The Social Work Board has a substantial workload and has generally experienced an increasing number of legal questions and issues it must address. These increased demands have made it difficult for the Attorney General's Office to provide the necessary resources to the Board. There are instances during an administrative hearing in which the Board needs the advice of an independent attorney. Also, there are times when someone from the Attorney General's Office is not available. The Board has also experienced an increased need for specialized personnel, such as investigators, auditors, etc.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1176

Short Title:	Property Exempt From Enforcement Actions.	(Public)
Sponsors:	Representatives Weiss, Glazier, Goodwin, Harrison (Primary Sponsors); Insko and Luebke.	
Referred to:	Judiciary IV.	

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT ADDITIONAL TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in such property twice the aforementioned value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) The debtor's aggregate interest, not to exceed four thousand dollars ($4,000) in value, in any wedding and engagement rings of the debtor and any jewelry of the debtor that is a family heirloom.

~~(6)~~(7) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

~~(7)~~(8) Professionally prescribed health aids for the debtor or a dependent of the debtor.

~~(8)~~(9) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

~~(9)~~(10) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(11) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in such an account within the preceding 12 months (except to the extent any such contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of

contributions) and only to the extent that such funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(12) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which such benefit plan is established.

(13) Alimony, support, separate maintenance, and child support payments or funds which have been received or which the debtor is entitled to receive, to the extent such payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(14) The earnings of the debtor for the debtor's personal services, at any time within 60 days next preceding an order under G.S. 1-362, an execution, or the filing of a petition for bankruptcy when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of the debtor or a family supported wholly or in part by the debtor's labor. Recent earnings exempt under this subdivision may only be waived pursuant to subdivision (2) of subsection (c) of this section.

(b) ~~Definition. "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~ (4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of such property is directly traceable to the liquidation or conversion of exemptible property of like kind and no additional property was transferred into or used to acquire such replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;
(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;
(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;
(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;
(5) For payment of obligations contracted for the purchase of the specific real property affected;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6.
(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
(8) For statutory liens, on the specific property affected, other than judicial liens;
(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;
(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising him of his rights. The judgment creditor must cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve him by mailing a copy of the notice to the judgment debtor at his last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such servic

and the date and address of service. The notice must be substantially in the following form:

NORTH CAROLINA _____ COUNTY		IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
_____ Judgment Creditor vs. _____	)))))	NOTICE OF PETITION (OR MOTION) TO SET OFF DEBTOR'S EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor must file with the court a schedule of:

(1) His assets, including their location;

(2) His debts and the names and addresses of his creditors;

(3) The property ~~which~~ that he desires designated as exempt.

The form for the statement must be substantially as follows:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD

Judgment Creditor	)	SCHEDULE OF DEBTOR'S
	)	PROPERTY
vs.	)	AND REQUEST TO
	)	SET ASIDE EXEMPT
Judgment Debtor	)	PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;
2. That I was born on _____;
(date of birth)
3. That I am (married to _____)
(spouse's name)
_____;
(not married)
4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)
6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____

_____

_____

_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____

_____

_____

_____

_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s) _____

_____

_____

_____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____
Address _____
(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value
_____	_____
_____	_____
_____	_____

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

_____

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8), ~~$1,500~~$1,000 allowed here; (b) if you

claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of~~ ~~$2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value: _____

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____
Address _____
(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any such contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds

20. That I wish to claim as exempt the following wedding and engagement rings and any jewelry of mine that is a family heirloom, not to exceed $4,000 in value. I understand that I am entitled to this exemption after deduction of the amount of any valid liens or purchase money security interests.

Item (or Class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
_____	_____	_____	_____
_____	_____	_____	_____

~~16.~~21. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value
_____		
_____		
_____		

This the _____ day of_____, ____

_____
Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

_____
Notary Public My Commission Expires:"

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of his rights was served in accordance with G.S. 1C-1603(a)(4) or if he does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina ~~Constitution.~~Constitution, except as provided in G.S. 1C-1601(a)(14) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and ~~personal property~~ other exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.~~judgment. Wages of the judgment debtor shall not be garnished and applied towards the satisfaction of a judgment unless specifically authorized by statute."

SECTION 6. Article 16 of Chapter 1C of the General Statutes is amended by adding a new section to read:

"**§ 1C-1601.1. Automatic adjustment of value of certain exempt property; public notice of automatic adjustment.**

(a) Effective April 1, 2009, and effective April 1 every three years thereafter, each dollar amount under subsection (a) of G.S. 1C-1601 shall be automatically adjusted and amended to a revised amount that:

(1) Reflects the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the most recent three-year period ending immediately before January 1 that immediately precedes the April 1 of the year in which the automatic adjustment occurs, and

(2) Is then rounded to the nearest twenty-five dollars ($25.00).

At the same time, G.S. 1C-1603(c)(3) is amended to make conforming changes to the dollar amounts in the form of the notice from the court to the judgment debtor.

(b) No later than March 20 of the year in which the automatic adjustment under this section occurs, the Administrative Office of the Courts shall give public notice that the automatic adjustment will occur and the revised amounts that will come into effect that April 1 and shall cause G.S. 1C-1601 and G.S. 1C-1603, reflecting the revised amounts, to be published in the next available North Carolina Register prior to that April 1. The Reviser of Statutes shall cause G.S. 1C-1601 and G.S. 1C-1603, reflecting the revised amounts, to be printed at the next publication of the General Statutes or any supplement to the General Statutes immediately following an automatic adjustment under this section."

SECTION 7. This act becomes effective January 1, 2006.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1176 DATE 4/26/05

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

COMMITTEE SUBSTITUTE H1176-CSSW-21

(Rep.) Weiss
Sen.)

moves to amend the bill on page 12, line 41

( ) WHICH CHANGES THE TITLE

by deleting the phrase "G.S. 1C-1601(a)(14)" and substituting the phrase "G.S. 1C-1601(a)(13)";

and on page 13, lines 9-10, by deleting the phrase "and applied towards the satisfaction of a judgment".

SIGNED Jennifer Weiss

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 1176:
Property Exempt From Enforcement Actions

BILL ANALYSIS

Committee:	House Judiciary IV	**Introduced by:**	Reps. Weiss, Glazier, Goodwin, Harrison
Date:	April 26, 2005	**Summary by:**	Dianna Jessup and Jennifer McGinnis Committee Counsels
Version:	PCS H1176-CSSW-21		

SUMMARY: ***House Bill 1176 would increase the limit on property a judgment debtor can exempt from claims of a creditor, would add new exemptions, and would provide a mechanism for automatically changing those limits based on changes in the Consumer Price Index. The automatic adjustments would become effective beginning on April 1, 2009; otherwise, the act would become effective January 1, 2006.***

The PCS would delete the family heirloom exemption and would change the method for implementing the automatic changes in the exemptions.

CURRENT LAW: When a creditor obtains a judgment in an action against a debtor, the creditor can execute the judgment and force a sale of the debtor's property to satisfy the judgment. Debtors are entitled to "exempt", or keep free from the creditor, a certain amount of interest in specified property, including real or personal property, motor vehicles, tools of the trade, life insurance, individual retirement plans, health aids, and compensation for personal injury. According to the NC Bar Association, the amounts of the exemptions have not been updated since 1991. In order to claim these exemptions, a debtor must file a Schedule of Debtor's Property and Request to Set Aside Exempt Property with the court.

BILL ANALYSIS: The bill would make the following changes to the amount of exemptions, and would add the exemptions noted in the table below.

Exemption	Current Law	House Bill 1176
Real or personal property	$10,000	$18,500; for an unmarried debtor 65 and older, $37,000 if previously owned as entireties or JTROS
"Wildcard" or unused exemption	$3,500	$5,000
One motor vehicle	$1,500	$3,500
Household furnishings and goods	$3,500 for debtor $750 for each dependent (total $3,000 dependents)	$5,000 for debtor $1,000 for each dependent (total $4,000 dependents)
Tools of the trade	$750	$2,000
Wedding and engagements rings	Could be included as a household	$4,000

	good	
Compensation for personal injury	100%	Includes compensation from private disability policies or annuities
Individual retirement plans	100%	Adds Roth IRAs (did not exist in 1991)
College savings plans	No exemption	$25,000 (CSPs did not exist in 1991)
Retirement benefits from other states	State retirement plan benefits exempt under G.S. 135-9 and 135-5; no exemption for retirement benefits from other states	100%
Alimony, support, separate maintenance, and child support	No exemption	100% to the extent reasonably necessary for the support of the debtor or any dependent of the debtor
Debtor earnings for personal services within 60 days	Currently in another statute (G.S. 1-362)	100% if the earnings are necessary for the use of the debtor or a family supported wholly or in part by the debtor's labor.

The bill would also make the following substantive changes:

- Codify the "replacement property" exception found in case law that permits debtors to exempt recent purchases if the purchase is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.
- Specify that the exemptions form must be served on the debtor at the time the debtor is advised of his exemption rights.
- Amend the Notice form and the Schedule form to notify debtors that other exemptions may be available and that there is a prompt procedure for challenging an attachment or levy.
- Provide that the amounts in the table above will be adjusted every three years to reflect the change in the Consumer Price Index for All Urban Consumers.

BACKGROUND: The Bankruptcy Section Council of the North Carolina Bar Association formed an Exemption Revision Committee in 2002 out of a concern by the council that "the real and practical values of North Carolina's exemptions have diminished greatly since they were last revised in 1991." The Committee was comprised of debtor and creditor attorneys, a Chapter 7 Trustee, and a staff attorney for the Bankruptcy Court. The Committee analyzed available data and sought to determine what statutory revisions would be appropriate to recommend for endorsement by the Bankruptcy Section Council. The

Committee concluded that the dollar amounts of the current exemptions were too low. The changes recommended by the Committee are reflected in House Bill 1176 and were approved by both the Bankruptcy Section Council and the Board of Governors of the North Carolina Bar Association. According to the Bar's report, all of the recommended dollar amounts are within 20% of any corresponding federal bankruptcy exemption.

H1176-SMRI-001

Dianna Jessup contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1176
PROPOSED COMMITTEE SUBSTITUTE H1176-PCS80326-SW-21

Short Title: Property Exempt From Enforcement Actions. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(5a) The debtor's aggregate interest, not to exceed four thousand dollars ($4,000) in value, in any wedding and engagement rings of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's

past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(13) The earnings of the debtor for the debtor's personal services, at any time within 60 days preceding an order under G.S. 1-362, an execution, or the filing of a petition for bankruptcy when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of the debtor or a family supported wholly or in part by the debtor's labor. Recent earnings exempt under this subdivision may only be waived pursuant to subdivision (2) of subsection (c) of this section.

(b) ~~Definition. "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~ (4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6.

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve ~~him~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove

service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice ~~must~~ shall be substantially in the following form:

NORTH CAROLINA _____ COUNTY		IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
_____ Judgment Creditor vs. _____	)))))	NOTICE OF PETITION (OR MOTION) TO SET OFF DEBTOR'S EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

(1) ~~His~~ The debtor's assets, including their location;

(2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;

(3) The property ~~which~~ that ~~he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
Judgment Creditor)) vs.)) Judgment Debtor)	SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN addition TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;
2. That I was born on _____;
(date of birth)
3. That I am (married to _____)
(spouse's name)
_____;
(not married)
4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____

_____

_____

_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____

_____

_____

_____

_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s) _____

_____

_____

_____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____
Address _____

(2) Name _____ Current Balance _____
Address _____

(3) Name _____ Current Balance _____
Address _____

(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any

valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

_____

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8), ~~$1,500~~$1,000 allowed here; (b) if you claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of $2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value: _____

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

_____

_____

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds
_____		
_____		
_____		

20. That I wish to claim as exempt the following wedding and engagement rings not to exceed $4,000 in value. I understand that I am entitled to this exemption after deduction of the amount of any valid liens or purchase money security interests.

Item (or Class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
_____	_____	_____	_____
_____	_____	_____	_____

~~16.~~21. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value
_____		
_____		
_____		

This the _____ day of_____, ____

Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

Notary Public My Commission Expires:".

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of ~~his~~ the debtor's rights was served in accordance with G.S. 1C-1603(a)(4) or if ~~he~~the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina ~~Constitution.~~Constitution, except as provided in G.S. 1C-1601(a)(13) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and ~~personal property~~ other exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.~~judgment. Wages of the judgment debtor shall not be garnished unless specifically authorized by statute."

SECTION 6.(a) Article 16 of Chapter 1C of the General Statutes is amended by adding a new section to read:

"**§ 1C-1601.1. Automatic adjustment of value of certain exempt property; revision of form to reflect automatic adjustment.**

(a) Every three years on April 1, each dollar amount under subsection (a) of G.S. 1C-1601 shall be automatically adjusted and amended to a revised amount that:

(1) Reflects the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the most recent three-year period ending immediately before January 1 that immediately precedes April 1 of the year in which the automatic adjustment occurs, and

(2) Is then rounded to the nearest twenty-five dollars ($25.00).

(b) Prior to April 1 of the year in which the automatic adjustment under subsection (a) of this section occurs, the Administrative Office of the Courts shall change the Statement by the Debtor form to be filed by the debtor pursuant to G.S. 1C-1603(c) to reflect the revised amounts."

SECTION 6.(b) The first automatic adjustment prescribed in G.S. 1C-1601.1 shall become effective on April 1, 2009.

SECTION 7. Except as otherwise provided, this act becomes effective January 1, 2006.

House Pages

Name Of Committee: Jud II Date: 4-26-05

1. Name: Craig Burnham
   County: Vance
   Sponsor: Jim Crawford
2. Name: Jackson Blackburn
   County: Vance
   Sponsor: Jim Crawford
3. Name: Holly Dickens
   County: Franklin
   Sponsor: Jim Crawford
4. Name: Thomas Harper
   County: Nash
   Sponsor: Speaker Black
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: FRED HINES
2. Name: Jim Womack } House Sgt At Arms
3. Name: Bend Barefoot
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

JUDICIARY IV — 04-26-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Algeman Butler	Wilmington NC
Pam McAfee	NC Bar Assoc Cary NC
Margaret R Westbrook	"
Pamela Best	AOC
Courtney Denning	NC Bar Association Cary NC
Rebecca Troutman	NCACC
Billy Brewer	Raleigh, NC
Rob Schofield	NC Justice Center
Celia Pistolis	Legal Aid of NC
Jessica Sage	NC Family Policy Council

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
April 28, 2005

The House Committee on Judiciary IV met on Thursday, April 28, 2005 in Room 415 of the Legislative Office Building at 9:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Leo Daughtry, Carolyn Justus, Grier Martin, Earline Parmon and staff attorneys Trina Griffin, Jennifer McGinnis, Steve Rose and Dianna Jessup. Representatives Margaret Dickson and Pryor Gibson, primary sponsors of bills before the committee, were also present. Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss introduced Representative Gibson, a Primary Sponsor of HB 687 – AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE. Representative Daughtry moved to adopt the Proposed Committee Substitute for discussion; the motion was adopted. Representative Gibson spoke on the bill and Ms. Griffin, staff counsel, further explained the bill. Representative Gibson asked for an Incarceration Fiscal Note. Representative Parmon moved to give a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. The motion was adopted.

The next bill on the agenda was HB 723 – AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK. A Proposed Committee Substitute was presented. The motion by Representative Parmon to accept the Proposed Committee Substitute for discussion was adopted. This bill was first heard in Judiciary IV on April 19th and referred to a sub-committee. Representative Chairman Weiss called on Representative Martin, chairman of the sub-committee, to report on the findings of the sub-committee. Ms. Colleen Kochanek, representing the NC Association of Chiefs of Police, voiced a concern by the police chiefs. Representative Glazier said that if needed, a further amendment could be made on the House floor or a change could be made at the university level to address this concern. Minutes of the sub-committee are attached and made part of these minutes. An amendment from Representative Glazier was brought forth. The amendment was adopted. Representative Daughtry moved to give a favorable report to the Proposed Committee Substitute, as amended, unfavorable to the original bill and be re-referred to the Committee on Finance. Representative Martin had a question concerning a discrepancy in the language of the bill. Representative Daughtry's motion on the floor was displaced, with his consent, while the language in question was being re-worked. Representative Martin moved to accept this amendment to the bill. The amendment was adopted. Representative Daughtry repeated his motion to give a

favorable report to the Proposed Committee Substitute, as amended, unfavorable to the original bill and be re-referred to the Committee on Finance. The motion was adopted.

A Proposed Committee Substitute was presented for the next bill, HB 1133 – AN ACT AUTHORIZING CRIMINAL RECORDS CHECKS FOR COUNTY GOVERNMENTS. The motion by Representative Justus to accept the Proposed Committee Substitute was adopted for discussion. Chairman Weiss called on Representative Dickson, a primary sponsor, to speak on the bill. Representative Justus moved to give the Proposed Committee Substitute a favorable report, unfavorable to the original bill. The motion was adopted.

There being no further business, the meeting was adjourned at 9:30 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, HB 687 Committee Report, Copy of Bill, Bill Analysis, Legislative Incarceration Fiscal Note, Committee Substitute; HB 723 Committee Report, Subcommittee Report, Copy of Bill, Bill Analysis, Amendments (2) Committee Substitute; HB 1133 Committee Report, Copy of Bill, Bill Analysis, Committee Substitute; Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday April 28, 2005
Room 415 LOB
9:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 687 - PIRATING MOVIES
Representatives Gibson, Wright, Brubaker, and McComas

HB 723 – UNC/C CRIMINAL RECORD CHECKS/FEE.-AB
Representatives Glazier and Dickson

HB 1133 – COUNTY GOV'T. CRIMINAL RECORDS CHECKS
Representatives Dickson, Lucas, McAllister, and Glazier

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 687 A BILL TO BE ENTITLED AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.

☐ 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, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 687
Corrected Copy 3/22/05

Short Title:	Pirating Movies.	(Public)
Sponsors:	Representatives Gibson, Wright, Brubaker, and McComas (Primary Sponsors), and Stiller.	
Referred to:	Judiciary IV.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 58A.

"Audiovisual Recordings.

"**§ 14-440.1. Unlawful operation of an audiovisual recording device.**

(a) Definitions. – The following definitions apply to this section:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(b) Offense. – It is unlawful for any person knowingly to operate the audiovisual recording function of any device in a motion picture theater, while a motion picture is being exhibited, without the written consent of the motion picture theater owner.

(c) Penalty. – A violation of this section is punishable as follows:

(1) Unless the conduct is covered under some other provision of law providing greater punishment, any person convicted of a violation of this section is guilty of:

a. A Class 1 misdemeanor, if the violation is a first offense under this section.

b. A Class I felony, if the violation is a second or subsequent offense under this section.

(2) If a person is convicted of any violation of this section, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of the following:

a. All infringing articles.

b. All implements, devices, and equipment used or intended to be used in the manufacture of the infringing articles.

(d) Immunity of The Real Property Owner. – The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken by the owner, lessee, agent, or employee in good faith believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable or the period of detention was unreasonably long.

(e) This section does not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 687: Pirating Movies

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	April 28, 2005
Introduced by:	Reps. Gibson, Wright, Brubaker, McComas	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to Second Edition H687-CSSV-15		

SUMMARY: ***House Bill 687 creates a new criminal offense for the unlawful operation of an audiovisual recording device in a movie theater for the purpose of copying motion pictures. The PCS makes some clarifying changes.***

CURRENT LAW: There is no State law criminalizing the recording or copying of motion pictures. Historically, the copying or distributing of another's original work has been addressed within the context of federal copyright law. Federal law provides both civil and criminal penalties for copyright infringement. 17 U.S.C. 501(b) details the mechanisms by which an owner of a copyright may file a civil suit, and 28 U.S.C. 1338 expressly refers to civil actions arising under the copyright act. Copyright infringement is also subject to criminal prosecution if the infringement is willful and for purposes of commercial advantage or private financial gain. 17 U.S.C. 506(a). If the offense consists of the reproduction or distribution, during any 180-day period, of 10 or more copies having a retail value of more than $2,500, the offense is a felony; otherwise, the offense is a misdemeanor. 18 U.S.C. 2319.

BILL ANALYSIS:

Elements of the Offense

House Bill 687 makes it a criminal offense to do the following:

- Knowingly operate or attempt to operate
- An audiovisual recording device in a motion picture theater
- To transmit, record or otherwise make a copy of a motion picture, or any part thereof,
- Without the written consent of the motion picture theater owner.

Penalty

- A first offense would be a Class 1 misdemeanor.
- A second or subsequent offense would be a Class I felony.
- A person who is convicted is subject to the forfeiture and destruction of all unauthorized copies of motion pictures or audiovisual works, or any parts thereof, as well as all implements, devices, and equipment used or intended to be used in connection with the offense.

Immunity of the Real Property Owner

The owner or lessee of a motion picture theater who alerts law enforcement authorities of an alleged violation is immune from civil liability arising out of measures taken in good faith to detain a person believed to have violated this provision while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable.

Authorized Activities

This offense would not apply to lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government from operating any audiovisual recoding device in a theater as part of a lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

BACKGROUND: Bills have been introduced in both houses of Congress creating a federal criminal offense for this same activity. Senate Bill 167, titled the Family Entertainment and Copyright Act of 2005, has passed both the House and the Senate and was presented to the President on April 21, 2005. Approximately 22 states have similar anti-piracy laws.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 687 (Second Edition)

SHORT TITLE: Pirating Movies.

SPONSOR(S): Representatives Brubaker, McComas, Wright, and Gibson

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	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
LOCAL GOVERNMENTS	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Exact number cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)	Exact number cannot be determined; no additional positions anticipated.				

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

EFFECTIVE DATE: December 1, 2005

**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: This bill would enact new G.S. 14-440.1 to provide that it is a criminal offense for a person to operate the audiovisual recording function of any device in a motion picture theater while a motion picture is being shown without the theater owner's consent. A first conviction for this offense would be a Class 1 misdemeanor; a second, and any subsequent conviction would be a Class I felony.

ASSUMPTIONS AND METHODOLOGY:

General

An empirical analysis of unauthorized copies of movies available on the Internet between January of 2002 and June of 2003 conducted by AT&T and the University of Pennsylvania indicated that the majority of these movies did not originate from through-the-air recordings captured in movie theaters.[1] According to the study, through-the-air recordings of higher quality typically must be made by movie theater employees with access to the projection equipment and direct audio input. Furthermore, once a single unauthorized copy of a movie has been leaked to the Internet, there is a reduced demand for additional copies, inherently limiting the likelihood that an unauthorized recording will be made to a small number per movie released. Given these limitations upon the number of offenses likely to be committed and the class of individuals likely to commit an offense under this bill, the number of charges and convictions resulting from this legislation are not expected to be substantial.

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Because this bill would create a new criminal offense (operating the audiovisual recording function of a device while in a motion picture theater), the Sentencing Commission has no historical data from which to estimate how the legislation would impact prison population. A first conviction for the offense would be a Class 1 misdemeanor, which would likely be served in a county jail if the sentence were active. A second conviction would be a Class I felony, which, if active, would be served in state prison.

Class 1 Misdemeanors: In FY 2003-04, 19 percent of Class 1 misdemeanants received active sentences, and the average estimated sentence length was 43 days. DOC reimburses the county for housing offenders sentenced to between thirty and ninety days at a rate of $18 per offender per day. Because active sentences of less than ninety days are served in county jails, Class 1 misdemeanor convictions resulting from this legislation are not expected to significantly impact prison population.

Class I Felonies: In FY 03-04, eleven percent of Class I felony convictions resulted in active sentences. If, for example, there were ten Class I convictions for this proposed offense per year,

[1] Byers, Simon, et. al. "Analysis of Security Vulnerabilities in the Movie Production and Distribution Process." October, 2003 <http://www.research.att.com/~pdmcdan/drm03.pdf>.

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. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated $24,740.

Non-Active Sentences: In FY 2003-04, 49 percent of Class I convictions resulted in intermediate sanctions and 40 percent in community sanctions; two percent of Class 1 misdemeanants received intermediate sanctions and 79 percent received community punishment. Probation officers in the Division of Community Correction (DCC) supervise offenders with intermediate sanctions at an estimated cost of $10.94 per day for the first six months and $1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is $1.87 per day.

Judicial Branch

For most criminal penalty bills, the Administrative Office of the Courts (AOC) 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.

As this bill would create a new offense, no data is available to estimate the number of charges that might result from this bill. For any additional Class 1 misdemeanor or Class I felony charges due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing district and superior court workload, respectively. AOC estimates the costs to process one Class 1 misdemeanor or one Class 1 felony charge as shown in Table 2 below. Based on prior-year data, the majority of charges that are not dismissed are likely to be settled via guilty plea.

Table 1: CY 2004 Estimated Per Charge Settlement Costs

	Settled via Trial			Settled via Guilty Plea
Offense Class	*Court/Attorney Costs*	*Indigent Defense*	*Total*	
Class 1 Misdemeanor	$1,880	$1,333	$3,213	$284
Class I Felony	$3,877	$1,931	$5,808	$329

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Aaron Paul and Jim Mills

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

Official
Fiscal Research Division
Publication

DATE: April 14, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 687
Corrected Copy 3/22/05
PROPOSED COMMITTEE SUBSTITUTE H687-PCS70409-SV-15

Short Title: Pirating Movies. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE CRIMINAL OFFENSE OF UNLAWFUL OPERATION OF AN AUDIOVISUAL RECORDING DEVICE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 58A.

"Audiovisual Recordings.

"**§ 14-440.1. Unlawful operation of an audiovisual recording device.**

(a) Definitions. – The following definitions apply to this section:

(1) "Audiovisual recording device" means a digital or analog photographic or video camera, or any other technology or device now known or later developed, capable of recording, copying, or transmitting a motion picture, or any part thereof, regardless of whether audiovisual recording is the sole or primary purpose of the device.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(b) Offense. – Any person who knowingly operates or attempts to operate an audiovisual recording device in a motion picture theater to transmit, record, or otherwise make a copy of a motion picture, or any part thereof, without the written consent of the motion picture theater owner shall be guilty of a violation of this section.

(c) Penalty. – A violation of this section is punishable as follows:

(1) Unless the conduct is covered under some other provision of law providing greater punishment, any person convicted of a violation of this section is guilty of:

a. A Class 1 misdemeanor, if the violation is a first offense under this section.

b. A Class I felony, if the violation is a second or subsequent offense under this section.

(2) If a person is convicted of any violation of this section, the court, in its judgment of conviction, shall order the forfeiture and destruction or other disposition of the following:

a. All unauthorized copies of motion pictures or other audiovisual works, or any parts thereof.

b. All implements, devices, and equipment used or intended to be used in connection with the offense.

(d) Immunity of the Real Property Owner. – The owner or lessee of a motion picture theater, or the authorized agent or employee of such owner or lessee, who alerts law enforcement authorities of an alleged violation of this section shall not be liable in any civil action arising out of measures taken by the owner, lessee, agent, or employee in the course of detaining a person that the owner, lessee, agent, or employee in good faith believed to have violated this section while awaiting the arrival of law enforcement authorities, unless the plaintiff can show by clear and convincing evidence that the measures were manifestly unreasonable or the period of detention was unreasonably long.

(e) Authorized Activities. – This section does not prevent any lawfully authorized investigative, protective, law enforcement, or intelligence gathering employee or agent of a local, State, or federal government from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law enforcement, or intelligence gathering activities."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 723 A BILL TO BE ENTITLED AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

MINUTES

HOUSE JUDICIARY IV SUBCOMMITTEE ON HB 723 — UNC/Criminal Record Checks/Fees

The House Subcommittee on HB 723 — UNC/Criminal Record Checks/Fees — met on April 21, 2005 at 09:00 am in Room 415 of the Legislative Office Building. The following members were present: Rep. Grier Martin, Subcommittee Chair, Rep. Rick Glazier, Rep. Karen Ray, and Rep. Jennifer Weiss. There were no visitors present.

The chair recognized Rep. Glazier to explain the bill, which permits the University of North Carolina to obtain criminal checks for prospective employees from the SBI and FBI databases, providing that the applicant will not be charged any applicable fees. The bill also makes it a criminal offense to provide false information that is the basis of a criminal check. University law enforcement officers who are certified DCI operators may conduct the criminal record check, to the extent permitted by law. For a criminal record check performed by the Department of Justice, the Department shall charge a reasonable fee to the University for conducting a criminal check under this section. The fee will not exceed the actual cost of locating, editing, researching and retrieving the information.

After discussion among the members, Rep. Ray moved that lines 9 through 13 of the bill be rewritten to require that the Board of Governors adopt a policy to be applied uniformly to all constituent institutions regarding whether and under what circumstances criminal record checks will be required before an unconditional offer of employment or promotion is made at the constituent institutions. The motion carried. Rep. Glazier moved that lines 20 through 21 and 30 be deleted prohibiting the University from requiring an applicant to pay for a criminal history check. The motion carried. Rep. Glazier moved that the bill be given an unfavorable report and that the proposed committee substitute be adopted. The motion carried.

There being no further business before the subcommittee, they stood adjourned at 09:40 am.

Respectfully submitted,

Rep. Grier Martin
Subcommittee Chair

Charlotte Graham
Subcommittee Clerk

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 723

Short Title: UNC/Criminal Record Checks/Fee.-AB (Public)

Sponsors: Representatives Glazier, Dickson (Primary Sponsors); and Insko.

Referred to: Judiciary IV, if favorable, Finance.

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.2A. Criminal record checks of university personnel.**

(a) The Department of Justice may provide a criminal record check to administrators of The University of North Carolina, or of any of its institutions or entities, concerning a person who has applied for employment or a promotion in The University of North Carolina System, or its institutions or entities, if the applicant consents to the record check. The Department may also provide a criminal record check to The University of North Carolina by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The information shall be kept confidential as provided in G.S. 116-40.5A.

(b) University law enforcement officers who are certified DCI operators may conduct the criminal record check, to the extent permitted by law. For a criminal record check performed by the Department of Justice, the Department shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c) The Department of Justice shall adopt rules to implement this section."

SECTION 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-40.5A. University personnel criminal history checks.**

(a) As used in this section:

(1) "Criminal history" means a county, State, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties for The University of North Carolina. Such crimes include the following crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 4A, Prohibited Secret Societies and Activities; Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 9, Hazing; Article 10, Kidnapping and Abduction; Article 11, Abortion and Kindred Offenses; 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 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 27A, Sex Offender and Public Protection Registration Programs; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36, Offenses Against the Public Safety; Article 36A, Riots and Civil Disorders; Article 36B, Nuclear, Biological, or Chemical Weapons of Mass Destruction; Article 39, Protection of Minors; Article 47, Cruelty to Animals; Article 51, Protection of Athletic Contests; Article 52, Miscellaneous Police Regulations; Article 58, Records, Tapes and Other Recorded Devices; and Article 60, Computer-Related Crime.

Such 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.

In addition to the crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "University personnel" means any:

a. Applicant for employment or promotion with The University of North Carolina or any of its institutions or entities whether full-time or part-time, or

b. Independent contractor or employee of an independent contractor of The University of North Carolina, or any of its institutions or entities, if the independent contractor carries out duties customarily performed by university personnel, whether paid with federal, State, local, or other funds.

(3) "University" means The University of North Carolina, or any of its institutions or entities, including the University of North Carolina Health Care System.

(b) The Board of Trustees of each constituent institution of the University shall adopt a policy on whether and under what circumstances an applicant for a position or promotion at that constituent institution shall be required to be checked for a criminal history before the applicant is offered an unconditional job or promotion. The Board of Governors of The University of North Carolina shall adopt such a policy for the General Administration, and the Board of Directors of the UNC Health Care System shall adopt a policy for the Health Care System. Each constituent institution and other entities of the University shall apply its policy uniformly in requiring applicants for University positions or promotions to be checked for a criminal history. The University may employ an applicant conditionally while the University is checking the person's criminal history and making a decision based on the results of the check.

The University shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the University the criminal history from the State and National Repositories of Criminal Histories of any applicant for a University position or promotion in the University, or any of its institutions or entities, which requires a criminal history check. The University shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the University, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The University shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The University shall not require an applicant to pay for being fingerprinted.

(d) The University shall review the criminal history it receives on a person. The University shall determine whether the results of the review indicate that the person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a University employee and shall use the information when making employment decisions and decisions with regard to independent contractors. The University shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The University may delegate any of the duties in this section to one or more of its administrators.

(e) All the information received by the University through the checking of the criminal history in accordance with this section is privileged information and is not a

public record but is for the exclusive use of the University. The University may destroy the information after it is used for the employment purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of the University, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

(g) Any applicant for employment or promotion who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 723:
UNC/Criminal Record Checks/Fee.-AB

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	April 27, 2005
Introduced by:	Reps. Glazier, Dickson	**Summary by:**	Jennifer McGinnis
Version:	PCS for First Edition H723-CSRI-7		Committee Counsel

SUMMARY: House Bill 723 would authorize the Department of Justice (DoJ) to provide the University of North Carolina (UNC) criminal record checks for applicants for employment and promotion. The bill would become effective December 1, 2005, and apply to offenses committed on or after that date.

CURRENT LAW: Under current State law, criminal record check provisions exist for residential school personnel (G.S. 143B-146.16), employees of local boards of education (G.S. 115C-332), and employees of charter schools (G.S. 115C-238.29K). **The provisions of House Bill 723 are substantially similar to these existing statutes.**

PCS CHANGES TO ORIGINAL BILL: The PCS -

- Makes a change at lines 9 through 13 of the original bill to require that the Board of Governors adopt a policy to be applied uniformly to all constituent institutions regarding whether and under what circumstances criminal record checks will be required before an unconditional offer of employment or promotion is made at the constituent institutions. The original bill directed the Board of Trustees of each constituent institution to develop such a policy.
- Deletes lines 20 and 21 of the original bill that prohibited the University from requiring an applicant to pay for a criminal history check.
- Deletes line 30 of the original bill that prohibited the University from requiring an applicant to pay for being fingerprinted.

BILL ANALYSIS:

Section 1.: The bill would add a new section to Chapter 114 of the General Statutes (Department of Justice) that would:

- Authorize DOJ to provide a criminal record check to UNC administrators concerning a person who has applied for employment or promotion in the UNC System, upon the applicant's consent.
- Authorize DOJ to provide a criminal record check to UNC by fingerprint card from National Repositories of Criminal Histories.
- Provide that the information obtained must be kept confidential.
- Provide that DoJ may charge a reasonable fee for conducting the criminal record check, not to exceed the actual cost of locating, editing, researching, and retrieving the information.
- Authorize certain University law enforcement officers, who are certified Division of Criminal Information-State Bureau of Investigation (DCI) operators, to conduct the criminal record check.

- Direct DoJ to adopt rules to implement the provisions.

Section 2.: The bill would add a new section to Chapter 116 of the General Statutes (Higher Education) that would:

- Provide that "criminal history" means a conviction of a crime, whether misdemeanor or felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill the his or her duties, and lists crimes included within definition.
- Provide that the term "University personnel" includes applicants for employment or promotion, and independent contractors who carry out duties customarily performed by university personnel.
- Require that the UNC Board of Governors adopt a policy regarding whether and under what circumstances criminal record checks will be required before an unconditional offer of employment or promotion is made and provide that the policy must be applied uniformly across the constituent institutions. The University would be permitted to employ an applicant conditionally while checking the applicant's criminal history and making a decision based on the results of the check.
- Include requirements regarding fingerprinting and obtaining consent forms. Provide that the University must consider refusal to consent to a check when making employment decisions and decisions with regard to independent contractors.
- Direct the University to determine whether the results of the check indicate that a person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that the person does not have the integrity or honesty to fulfill his or her duties. Direct the University to use the information when making employment decisions and make written findings in that regard.
- Provide that the results of the check are confidential and allow the University to destroy the information after one calendar year.
- Provide limitations on liability for the University and its employees.
- Make it a Class A1 misdemeanor to willfully furnish, supply, or give false information on an employment application that is the basis for a criminal record check. A Class A1 misdemeanor is punishable by 1 to 60 days of active, intermediate, or community punishment, assuming no prior convictions.

BACKGROUND: Currently, some campuses in the UNC System conduct pre-employment criminal conviction checks on prospective employees. Those that perform checks are using the Administrative Office of the Courts database, which contains only North Carolina convictions or are using automated databases in certain states that are available through commercial vendors.

EFFECTIVE DATE: The bill would become effective December 1, 2005, and apply to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 723

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 4/28/05

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

(Rep.) Glazier
Sen.)

1 moves to amend the bill on page 1, line 19
2 ( ) WHICH CHANGES THE TITLE
3 by deleting the word "officers" and
4 replacing it with the word "personnel".
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 723 DATE 4/28/05

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

COMMITTEE SUBSTITUTE ✓ 17723-CSRJ-7

(Rep.) Martin
Sen.)

1 moves to amend the bill on page 4, lines 16-17
2 ( ) WHICH CHANGES THE TITLE
3 by rewriting those lines to read:
4 "Section 3. This act becomes effective
5 December 1, 2005. Subsection (g) of
6 G.S. 116-40.5A applies to offenses
7 committed on or after that date."
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 723
PROPOSED COMMITTEE SUBSTITUTE H723-PCS80334-RI-7

Short Title: UNC/Criminal Record Checks/Fee.-AB (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO PERMIT THE UNIVERSITY OF NORTH CAROLINA TO OBTAIN CRIMINAL RECORD CHECKS, TO ALLOW CERTAIN FEES TO BE CHARGED FOR THE CRIMINAL RECORD CHECK, AND TO MAKE IT A CRIMINAL OFFENSE TO PROVIDE FALSE INFORMATION THAT IS THE BASIS OF A CRIMINAL RECORD CHECK.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.2A. Criminal record checks of university personnel.**

(a) The Department of Justice may provide a criminal record check to administrators of The University of North Carolina, or of any of its institutions or entities, concerning a person who has applied for employment or a promotion in The University of North Carolina System, or its institutions or entities, if the applicant consents to the record check. The Department may also provide a criminal record check to The University of North Carolina by fingerprint card from National Repositories of Criminal Histories, in accordance with G.S. 116-40.5A. The information shall be kept confidential as provided in G.S. 116-40.5A.

(b) University law enforcement personnel who are certified DCI operators may conduct the criminal record check, to the extent permitted by law. For a criminal record check performed by the Department of Justice, the Department shall charge a reasonable fee for conducting a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(c) The Department of Justice shall adopt rules to implement this section."

SECTION 2. Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-40.5A. University personnel criminal history checks.**

(a) As used in this section:

(1) "Criminal history" means a county, State, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the applicant (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties for The University of North Carolina. Such crimes include the following crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 4A, Prohibited Secret Societies and Activities; Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 9, Hazing; Article 10, Kidnapping and Abduction; Article 11, Abortion and Kindred Offenses; 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 19C, Financial Identity Fraud; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 27A, Sex Offender and Public Protection Registration Programs; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36, Offenses Against the Public Safety; Article 36A, Riots and Civil Disorders; Article 36B, Nuclear, Biological, or Chemical Weapons of Mass Destruction; Article 39, Protection of Minors; Article 47, Cruelty to Animals; Article 51, Protection of Athletic Contests; Article 52, Miscellaneous Police Regulations; Article 58, Records, Tapes and Other Recorded Devices; and Article 60, Computer-Related Crime.

Such 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.

In addition to the crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(2) "University personnel" means any:

a. Applicant for employment or promotion with The University of North Carolina or any of its institutions or entities whether full-time or part-time, or

b. Independent contractor or employee of an independent contractor of The University of North Carolina, or any of its institutions or entities, if the independent contractor carries out duties customarily performed by university personnel, whether paid with federal, State, local, or other funds.

(3) "University" means The University of North Carolina, or any of its institutions or entities, including the University of North Carolina Health Care System.

(b) The Board of Governors of The University of North Carolina shall adopt a policy to be applied uniformly to all constituent institutions of the University and the General Administration on whether and under what circumstances an applicant for a position or promotion shall be required to be checked for a criminal history before the applicant is offered an unconditional job or promotion. The Board of Directors of the UNC Health Care System shall adopt such a policy for the Health Care System. Each constituent institution and other entities of the University shall apply its policy uniformly in requiring applicants for University positions or promotions to be checked for a criminal history. The University may employ an applicant conditionally while the University is checking the person's criminal history and making a decision based on the results of the check.

(c) The Department of Justice shall provide to the University the criminal history from the State and National Repositories of Criminal Histories of any applicant for a University position or promotion in the University, or any of its institutions or entities, which requires a criminal history check. The University shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the University, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The University shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

(d) The University shall review the criminal history it receives on a person. The University shall determine whether the results of the review indicate that the person (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as a University employee and shall use the information when making employment decisions and decisions with regard to independent contractors. The University shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors. The University may delegate any of the duties in this section to one or more of its administrators.

(e) All the information received by the University through the checking of the criminal history in accordance with this section is privileged information and is not a

public record but is for the exclusive use of the University. The University may destroy the information after it is used for the employment purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of the University, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes.

(g) Any applicant for employment or promotion who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor."

SECTION 3. This act becomes effective December 1, 2005. G.S. 116-40.5A(g), as enacted by this act, applies to offenses committed on or after that date.

reported 4/28/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 1133 A BILL TO BE ENTITLED AN ACT AUTHORIZING CRIMINAL RECORDS CHECKS FOR COUNTY GOVERNMENTS.

☐ 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, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H

HOUSE BILL 1133*

Short Title:	County Gov't. Criminal Records Checks.	(Public)
Sponsors:	Representatives Dickson, Lucas, McAllister, Glazier (Primary Sponsors); and Insko.	
Referred to:	Judiciary IV.	

April 6, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORDS CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"**§ 114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

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

HOUSE BILL 1133:
County Gov't. Criminal History Checks

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	April 28, 2005
Introduced by:	Rep. Dickson	**Summary by:**	Steven Rose
Version:	H1133-CSRL-13		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for HB 1133 gives county governments the authority to have criminal background checks performed by the SBI and FBI on its prospective employees and to use these background checks in determining employment.***

CURRENT LAW: Current law does not give county governments the authority to perform criminal background checks on its prospective employees. City governments were given the authority requested in this bill in 2003.

BILL ANALYSIS: Section 1 of the bill authorizes the Department of Justice (SBI) to conduct criminal history background checks on persons who apply for employment with a county, as is currently permitted for a city. The county would submit the prospective employee's fingerprints along with a form signed by the individual giving consent to the background check. The SBI would search the State's criminal history file and forward the information to the FBI for a national criminal history record check. Information obtained by the county is to be kept confidential. The SBI may charge a fee for this service but not more than the actual costs accrued.

Section 2 adds a new section that would give county governments, and other county hiring authorities (sheriffs, registers of deeds, county departments of social services, and others) the authority to perform criminal records background checks of its prospective employees. This authority mirrors the authority given to cities in 2003.

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

Walker Reagan, Committee Counsel to the Senate Judiciary I Committee, contributed substantially to this summary.

h1133H1133-CSRL-13-SMRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1133*
PROPOSED COMMITTEE SUBSTITUTE H1133-PCS50370-RL-13

Short Title: County Gov't. Criminal Records Checks. (Public)

Sponsors:

Referred to:

April 6, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORDS CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"**§ 114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 5 of Chapter 153A of the General Statues is amended by adding a new section to read:

"**§ 153A-94.2. Criminal history record checks of employees permitted.**

The board of commissioners may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories

conducted by the Department of Justice in accordance with G.S. 114-19.14. The local or regional public employer may consider the results of these criminal history record checks in its hiring decisions."

SECTION 3. This act is effective when it becomes law.

House Pages

Name Of Committee:_____ Date: _____

1. Name: Isaac Davis
   County: Duplin
   Sponsor: Representative Tucker
2. Name: Florence Humnik
   County: Rowan
   Sponsor: Rep. Lorene Coates
3. Name: Alyssa Klaus
   County: Rowan
   Sponsor: Rep. Lorene Coates
4. Name: Jonathan Furnas
   County: Rowan
   Sponsor: Rep. Coates
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED HINES
2. Name: MARTHA GADISON } House Sgt @ Arms
3. Name: BRAD BAREFOOT
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — April 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Karen Johnson	Smith Anderson
Josh Wimmer	UNC
Amy Isbell	Motion Picture Association of America
Ralph Walker	AOC
Dana Simpson	SABDPS
Darley Montgomery	SOS
Colleen Kochanek	NC Assn. of Chiefs of Police
Robert Wilson	S.O.S.
Chad Hinton	Civitas Institute

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, May 3, 2005

The House Committee on Judiciary IV met on Tuesday, May 3, 2005, in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Culpepper, Daughtry, Earle, Holloway, Justus, Martin, Parmon and Ray. A Visitor's Registration list is attached and made part of these minutes. Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting.

Representative Martin was then recognized to speak on HB 1503 – REGIONAL PUBLIC TRANSPORTATION LIABILITY. The motion by Representative Parmon to adopt the Proposed Committee Substitute for discussion was adopted. Staff member Steve Rose explained the changes made by the committee substitute. After discussion, Representative Daughtry moved to give the Committee Substitute a favorable report and an unfavorable report to original bill. The motion was adopted.

The next bill on the agenda was HB 1375 – CHILD SUPPORT REFORMS. Representative Parmon moved to adopt the Proposed Committee Substitute for discussion; the motion was adopted and Representative Culpepper explained the bill. There were questions from the committee regarding how excessive arrears of child support payments can be prevented. Mr. Barry Miller, Chief of the N. C. Child Support Program, spoke on the bill. After discussion, Representative Earle moved for a favorable report of the Committee Substitute; unfavorable to the original bill. The motion was adopted.

House Bill 1434 – ELECTRONIC SIGNATURE UNDER RULE 4 was the next bill on the agenda. Representative Glazier explained the bill and called on staff member Jennifer McGinnis to give a more detailed explanation of the bill. In response to questions from the members, Ms. Colleen Kochanek from A.D.S. explained the electronic part of the bill. Rep. Glazier offered a technical amendment to the bill. Rep. Daughtry moved for a favorable report of the Committee Substitute as amended and unfavorable report for the original bill. The motion was adopted.

The meeting was adjourned at 10:45 a.m.

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report – HB 1503, HB 1503, Bill Analysis, G.S. 160A-485, Committee Substitute; Committee Report - HB1375, HB 1375, Bill Analysis, Committee Substitute; Committee Report - HB 1434, HB 1434, Bill Analysis, Amendment, Committee Substitute, Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 3, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 1375 - CHILD SUPPORT REFORMS.
Representative Culpepper

HB 1434 - ELECTRONIC SIGNATURE UNDER RULE 4.
Representatives Glazier and Stiller

HB 1503 - REGIONAL PUBLIC TRANSPORTATION LIABILITY.
Representative Martin

ADJOURNMENT

Minutes
5-3-05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1503 A BILL TO BE ENTITLED AN ACT TO CLARIFY THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES AND REGIONAL TRANSPORTATION AUTHORITIES ARE INCLUDED IN THE STATE TORT CLAIMS 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.

☐ 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 2005

HOUSE BILL 1503

Short Title:	Regional Public Transportation Liability.	(Public)
Sponsors:	Representatives Martin; and Warren.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES AND REGIONAL TRANSPORTATION AUTHORITIES ARE INCLUDED IN THE STATE TORT CLAIMS ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-291 is amended by adding a new subsection to read:

"(e) Regional public transportation authorities created pursuant to Article 26 of Chapter 160A of the General Statutes and regional transportation authorities created pursuant to Article 27 of Chapter 160A of the General Statutes are State agencies for purposes of this Article, and their liability in tort shall be only under this Article. Regional public transportation authorities and regional transportation authorities shall be obligated for payments under this Article, through the purchase of commercial insurance or otherwise in lieu of any responsibility of the State for this payment. Regional public transportation authorities and regional transportation authorities shall be similarly obligated to reimburse or have reimbursed the Department of Justice for any expenses in defending any claim against a regional public transportation authority and regional transportation authority under this Article."

SECTION 2. G.S. 160A-626 is amended by adding a new subsection to read:

"(f) Tort claims against the Authority brought pursuant to this section shall be brought in accordance with G.S. 143-291(e)."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 1503:
Regional Public Transportation Liability

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 2, 2005
Introduced by:	Rep. Martin	**Summary by:**	Steven Rose
Version:	PCS H1503-CSRL-16		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for HB 1503 provides that Regional Public Transportation Authorities will be treated as cities for purposes of civil liability.***

CURRENT LAW: With the exception of certain rail facilities, the law applicable to the civil liability of a Regional Public Transportation Authority is unclear. State agencies come under the State Tort Claims Act, which means that liability claims must be brought before the State Industrial Commission and are subject to a limit of $500,000 for claims arising from injuries to one person. Cities and counties are immune from civil liability except to extent they purchase liability insurance. It is not clear where the Authority falls.

BILL ANALYSIS: The Proposed Committee substitute would provide that a Regional Public Transportation Authority will be treated as a city for purposes of civil liability. It would be immune from liability except to the extent it purchases insurance.

EFFECTIVE DATE: The act is effective when it becomes law and applies to claims arising on or after that date.

H1503e1-SMRL

Article 21.

Miscellaneous.

§ 160A-485. Waiver of immunity through insurance purchase.

(a) Any city is authorized to waive its immunity from civil liability in tort by the act of purchasing liability insurance. Participation in a local government risk pool pursuant to Article 23 of General Statute Chapter 58 shall be deemed to be the purchase of insurance for the purposes of this section. Immunity shall be waived only to the extent that the city is indemnified by the insurance contract from tort liability. No formal action other than the purchase of liability insurance shall be required to waive tort immunity, and no city shall be deemed to have waived its tort immunity by any action other than the purchase of liability insurance. If a city uses a funded reserve instead of purchasing insurance against liability for wrongful death, negligence, or intentional damage to personal property, or absolute liability for damage to person or property caused by an act or omission of the city or any of its officers, agents, or employees acting within the scope of their authority and the course of their employment, the city council may adopt a resolution that deems the creation of a funded reserve to be the same as the purchase of insurance under this section. Adoption of such a resolution waives the city's governmental immunity only to the extent specified in the council's resolution, but in no event greater than funds available in the funded reserve for the payment of claims.

(b) An insurance contract purchased pursuant to this section may cover such torts and such officials, employees, and agents of the city as the governing board may determine. The city may purchase one or more insurance contracts, each covering different torts or different officials, employees, or agents of the city. An insurer who issues a contract of insurance to a city pursuant to this section thereby waives any defense based upon the governmental immunity of the city, and any defense based upon lack of authority for the city to enter into the contract. Each city is authorized to pay the lawful premiums for insurance purchased pursuant to this section.

(c) Any plaintiff may maintain a tort claim against a city insured under this section in any court of competent jurisdiction. As to any such claim, to the extent that the city is insured against such claim pursuant to this section, governmental immunity shall be no defense. Except as expressly provided herein, nothing in this section shall be construed to deprive any city of any defense to any tort claim lodged against it, or to restrict, limit, or otherwise affect any defense that the city may have at common law or by virtue of any statute. Nothing in this section shall relieve a plaintiff from any duty to give notice of his claim to the city, or to commence his action within the applicable period of time limited by statute. No judgment may be entered against a city in excess of its insurance policy limits on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section. No judgment may be entered against a city on any tort claim for which it would have been immune but for the purchase of liability insurance pursuant to this section except a claim arising at a time when the city is insured under an insurance contract purchased and issued pursuant to this section. If, in the trial of any tort claim against a city for which it would have been

immune but for the purchase of liability insurance pursuant to this section, a verdict is returned awarding damages to the plaintiff in excess of the insurance limits, the presiding judge shall reduce the award to the maximum policy limits before entering judgment.

(d) Except as otherwise provided in this section, tort claims against a city shall be governed by the North Carolina Rules of Civil Procedure. No document or exhibit which relates to or alleges facts as to the city's insurance against liability shall be read, exhibited, or mentioned in the presence of the trial jury in the trial of any claim brought pursuant to this section, nor shall the plaintiff, his counsel, or anyone testifying in his behalf directly or indirectly convey to the jury any inference that the city's potential liability is covered by insurance. No judgment may be entered against the city unless the plaintiff waives his right to a jury trial on all issues of law or fact relating to insurance coverage. All issues relating to insurance coverage shall be heard and determined by the judge without resort to a jury. The jury shall be absent during all motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance coverage. The city may waive its right to have issues concerning insurance coverage determined by the judge without a jury, and may request a jury trial on these issues.

(e) Nothing in this section shall apply to any claim in tort against a city for which the city is not immune from liability under the statutes or common law of this State. (1951, c. 1015, ss. 1-5; 1971, c. 698, s. 1; 1975, c. 723; 1985 (Reg. Sess., 1986), c. 1027, s. 27; 2003-175, s. 1.)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1503
PROPOSED COMMITTEE SUBSTITUTE H1503-PCS70423-RL-16

Short Title: Regional Public Transportation Liability. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT REGIONAL PUBLIC TRANSPORTATION AUTHORITIES ARE TREATED AS CITIES FOR PURPOSES OF CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-627. Civil liability.**

Subject to the provisions of G.S. 160A-626, the Authority shall be treated as a city for purposes of civil liability pursuant to G.S. 160A-485."

SECTION 2. This act is effective when it becomes law and applies to claims arising on or after that date.

Minutes
5-3-05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1375 A BILL TO BE ENTITLED AN ACT AMENDING THE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO CLARIFY AND ENHANCE THOSE LAWS.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the committee substitute bill, ~~☐ which changes the title~~, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H 1

HOUSE BILL 1375

Short Title:	Child Support Reforms.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO CLARIFY AND ENHANCE THOSE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.9 reads as rewritten:

"**§ 50-13.9. Procedure to insure payment of child support.**

(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) apply.

(b) After entry of an order by the court under subsection (a) of this section, the State Child Support Collection and Disbursement Unit shall transmit child support payments that are made to it to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

(b1) In a IV-D case:

(1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received. In any action establishing, enforcing, or modifying a child support order, the payment records maintained by the designated child support agency shall be admissible evidence, and the court shall permit the designated representative to authenticate those records.

(b2) ~~In a non-IV-D case:~~In a child support case not managed by the IV-D program:

~~(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. The State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.~~

(2) The clerk of court shall maintain all official records in the case.

~~(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.~~

~~(c) In a non-IV-D case, the parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order.~~ In a IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt.

~~(d) In a non-IV-D case, when the clerk of superior court is notified by the State Child Support Collection and Disbursement Unit that an obligor has failed to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of that amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, revocation of licensing privileges, or other appropriate means. Failure to receive the delinquency notice is not a defense in any subsequent proceeding. Sending the notice of delinquency is in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.~~

~~If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided in this subsection, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge. The enforcement order shall order the obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to the obligor's employment, the obligor's licensing privileges, and the amount and sources of the obligor's disposable income. The enforcement order shall state:~~

~~(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;~~

~~(2) That the obligor is delinquent and the amount of overdue support;~~

~~(2a) That the court may order the revocation of some or all of the obligor's~~

~~licensing privileges if the obligor is delinquent in an amount equal to the support due for one month;~~

~~(3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;~~

~~(4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;~~

~~(5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;~~

~~(6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.~~

~~The enforcement order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment. On motion of the person to whom support is owed, with the approval of the district court judge, if the district court judge finds it is in the best interest of the child, no enforcement order shall be issued.~~

~~When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.~~

~~This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee.~~

The clerk or a district court judge may order the obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to the obligor's employment, the obligor's licensing privileges, and the amount and sources of the obligor's disposable income.

~~(e) The clerk of court shall maintain and make available to the district court judge a list of attorneys who are willing to undertake representation, pursuant to this section, of persons to whom child support is owed. No attorney shall be placed on such list without his permission.~~

~~(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to be heard for enforcement at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:~~

~~(1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party; or~~

~~(2) The party to whom support payments are owed requests the judge not to appoint an attorney; or~~

~~(3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.~~

~~The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6.~~

(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

SECTION 2. G.S. 110-135 reads as rewritten:

"**§ 110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

A past-due public assistance debt as described in this section may be deemed negotiable and subject to reduction if the public assistance debt is not less than fifteen thousand dollars ($15,000) and the responsible parent continues to be obligated to pay current child support. Upon agreement between the State and the responsible parent, the responsible parent shall pay all child support payments, including payments due on child support arrears, entered by a valid court order for a 24-month period of time. Upon the timely payment of each court-ordered child support obligation during the full 24-month period, including payments due on child support arrears, the State shall reduce the responsible parent's public assistance debt by two-thirds. If the responsible parent is late or defaults on any single payment during the 24-month period, no portion of the public assistance debt shall be reduced. The responsible parent may attempt to achieve 24 consecutive months of child support payments as often as possible in order to reduce his or her public assistance debt. However, once the responsible parent's public assistance debt has been reduced by two-thirds because of the successful completion of this agreement, the responsible parent shall no longer be eligible for this program. The reduction of public assistance debt as set forth in this section shall be in addition to all other remedies available to the State for the retirement of the debt. This program shall not prevent the State from taking any and all other measures available by law.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage."

SECTION 3. G.S. 49-14(a) reads as rewritten:

"(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A ~~certified~~ copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

SECTION 4. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth ~~certificate and shall be presumed to be the natural father of the child,~~certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. ~~A~~ In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19 (b)(2)."

SECTION 5. G.S. 110-139.2(b1) reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a ~~delinquent~~ child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the ~~delinquency.~~amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the ~~obligor's child support obligation~~amount of unpaid support owed shall be ~~in arrears in~~ an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the ~~arrears amount~~amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the ~~obligor~~ obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. ~~The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure, except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent.~~ The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified ~~arrears amount,~~amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in

any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the ~~obligor's~~ contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The ~~lien may be contested~~obligor account holder may contest the lien only on the basis that the ~~arrearage~~ amount owed is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), whichever is less, or the ~~obligor~~ contesting party is not the person subject to the court order of support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the ~~delinquent~~ obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this ~~State.~~State without involvement of the Department."

SECTION 6. This act is effective 90 days after it becomes law.

J-IV
5-3-05

HOUSE BILL 1375: Child Support Reforms

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 3, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Trina Griffin
Version:	PCS to First Edition H1375-CSSV-17		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1375 makes several changes to the child support enforcement laws, including the following:***

- ***Removing the clerk of court's authority to monitor child support payment compliance.***
- ***Authorizing DSS to reduce by two-thirds an obligor's past-due public assistance debt where the obligor timely makes all child support payments, including arrearages, for a 24-month period.***
- ***Eliminating the requirement that birth certificates be certified when submitted as part of a paternity action.***
- ***Changing the method of service on financial institutions regarding liens on accounts of child support obligors from Rule 4 to Rule 5 of the North Carolina Rules of Civil Procedure.***

CURRENT LAW: Like all states, North Carolina has enacted a number of statutes to increase collections of child support. Many of these statutes are the results of federal initiatives in the area of child support. When an order for child support directs the obligor to pay the amount into the court, the obligor sends the payment to a centralized collection agency, the State Child Support Collection and Disbursement Unit (SCSCDU). If the custodial parent is a recipient of welfare assistance under Title IV-D of the Social Security Act, all payments for child support must be paid to the SCSCDU. The child support enforcement agency monitors payments to the SCSCDU and seeks various enforcement remedies if the obligor becomes delinquent.

In non-IV-D cases, the parties may agree that payments be made to the SCSCDU or the court may make such an order in its discretion. However, in these cases, the clerk of court has the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating enforcement procedures that it considers appropriate. The SCSCDU must notify the clerk of court of all payments made in non IV-D cases so that the clerk can initiate enforcement proceedings. The clerk sends by regular mail a notice of delinquency to the obligor. If the arrearage is not paid within 21 days, the clerk calendars a hearing to seek an enforcement remedy, such as entry of an income withholding order, contempt of court, or revocation of licensing privileges.

BILL ANALYSIS:

Section 1. Removal of clerk's authority to process child support payments

Under current law, a person has four options in seeking assistance with child support enforcement: (1) self-representation; (2) representation by a private attorney; (3) the child support enforcement, or IV-D, agency; or (4) the clerk of court. DSS, or child support enforcement, handles the vast majority of the overall child support enforcement cases and has more resources and enforcement tools at its disposal than the clerks of court.[1]

[1]DHHS currently has about 412,000 cases compared to the clerks of court, which have a total of about 47,000.

Section 1 of the bill would eliminate the authority of the clerk of court to monitor enforcement of payment under child support orders, further centralizing this function within DSS. The clerk would still be required to maintain all official records in the case, and the clerk or a district court judge would have the authority to issue an order ordering an obligor to appear and show cause why the obligor should not be the subject of one of the available enforcement remedies.

Section 2. Authorization for reduction of past-due public assistance debt in certain circumstances

A noncustodial parent ordered to pay child support would owe a debt to the custodial parent for failure to pay support. In addition, acceptance of public assistance on behalf of a dependent child creates a debt due and owing to the State. The State may bring an action against the responsible parent to recover amounts owed within 5 years of receipt of the last grant of public assistance.

Section 2 of the bill would authorize the State, through DSS, to negotiate and reduce by two-thirds the amount of past-due public assistance debt owed by a responsible parent on the condition that the parent timely pay all child support payments, including arrearages, for a 24-month period of time. If the parent is late or defaults on any payment during the 24-month period, no portion of the public assistance debt would be reduced. Once a parent has obtained a reduction as the result of timely payments for a 24-month period, the parent is not eligible for a subsequent reduction.

Section 3. Removal of certification requirement for birth certificates.

G.S. 49-14 sets out the procedure for establishing paternity. The purpose of this Article is to enable an illegitimate child to receive support from its biological father. Paternity may be established by filing a civil action with a certified copy of the child's birth certificate attached.

Section 3 of the bill would remove the requirement that the birth certificate be a "certified" copy.

Section 4. Clarification of "presumed natural father" reference.

G.S. 110-132 sets out the procedure by which parentage is determined for purposes of establishing a child support obligation. It states that a written affidavit executed by the putative father and mother of the child constitutes an admission of paternity and has the same legal effect as a judgment of paternity. G.S. 130A-101(f), which is the Vital Statistics Article, indicates that where the mother and father have signed affidavits acknowledging paternity, the father "shall be presumed to be the natural father of the child." This "presumed" language has created some confusion in light of G.S. 110-132.

Section 4 of the bill deletes the "presumed" language in order to clarify that G.S. 110-132 is the substantive law that governs paternity determinations, and that G.S. 130A-101(f) merely directs Vital Statistics to list the father on the birth certificate where an affidavit acknowledging paternity has been executed.

Section 5. Modifications to Notice Requirements Related to Liens on Bank Accounts.

Under current law, one enforcement mechanism available to DSS is levying an obligor's bank account. If a noncustodial parent has arrearages equal to six (6) months of their child support obligation or $1000 (whichever is less), the child support enforcement agency can request that a lien be placed on the parent's financial institution accounts. The child support agency is required to notify both the obligor and the financial institution of the relevant lien information in accordance with Rule 4 of the North Carolina Rules of Civil Procedure.

Section 5 of the bill does two things regarding the notice requirement:

- It would require the child support agency to notify any nonliable joint account holders, in addition to the responsible parent.
- It would require notice on the financial institution to be served in accordance with Rule 5 rather than Rule 4 of the North Carolina Rules of Civil Procedure. Rule 5 does not require a summons from the clerk or service by the sheriff (except where it refers to Rule 4). Service is made by either hand-delivery or regular mail.

EFFECTIVE DATE: This act is effective 90 days after it becomes law.

BACKGROUND: None of the changes in this bill are federal mandates. They are, however, recommendations of the Child Support Enforcement agency for improving the amount and efficiency with which child support payments are collected.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1375
PROPOSED COMMITTEE SUBSTITUTE H1375-PCS10293-SV-17

Short Title: Child Support Reforms. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AMENDING THE LAWS RELATING TO CHILD SUPPORT ENFORCEMENT IN ORDER TO CLARIFY AND ENHANCE THOSE LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 50-13.9 reads as rewritten:

"**§ 50-13.9. Procedure to insure payment of child support.**

(a) Upon its own motion or upon motion of either party, the court may order at any time that support payments be made to the State Child Support Collection and Disbursement Unit for remittance to the party entitled to receive the payments. For child support orders initially entered on or after January 1, 1994, the immediate income withholding provisions of G.S. 110-136.5(c1) apply.

(b) After entry of an order by the court under subsection (a) of this section, the State Child Support Collection and Disbursement Unit shall transmit child support payments that are made to it to the custodial parent or other party entitled to receive them, unless a court order requires otherwise.

(b1) In a IV-D case:

(1) The designated child support enforcement agency shall have the sole responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate.

(2) The clerk of court shall maintain all official records in the case.

(3) The designated child support enforcement agency shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received. In any action establishing, enforcing, or modifying a child support order, the payment records maintained by the designated child

support agency shall be admissible evidence, and the court shall permit the designated representative to authenticate those records.

(b2) In a non-IV-D case:

~~(1) The clerk of court shall have the responsibility and authority for monitoring the obligor's compliance with all child support orders in the case and for initiating any enforcement procedures that it considers appropriate. The State Child Support Collection and Disbursement Unit shall notify the clerk of court of all payments made in non-IV-D cases so that the clerk of court can initiate enforcement proceedings as provided in subsection (d) of this section.~~

(2) The clerk of court shall maintain all official records in the case.

~~(3) The clerk of court shall maintain any other records needed to monitor the obligor's compliance with or to enforce the child support orders in the case, including records showing the amount of each payment of child support received from or on behalf of the obligor, along with the dates on which each payment was received.~~

(c) ~~In a non-IV-D case, the parties affected by the order shall inform the clerk of court of any change of address or of other condition that may affect the administration of the order.~~ In a IV-D case, the parties affected by the order shall inform the designated child support enforcement agency of any change of address or other condition that may affect the administration of the order. The court may provide in the order that a party failing to inform the court or, as appropriate, the designated child support enforcement agency, of a change of address within a reasonable period of time may be held in civil contempt.

(d) ~~In a non-IV-D case, when the clerk of superior court is notified by the State Child Support Collection and Disbursement Unit that an obligor has failed to make a required payment of child support and is in arrears, the clerk of superior court shall mail by regular mail to the last known address of the obligor a notice of delinquency. The notice shall set out the amount of child support currently due and shall demand immediate payment of that amount. The notice shall also state that failure to make immediate payment will result in the issuance by the court of an enforcement order requiring the obligor to appear before a district court judge and show cause why the support obligation should not be enforced by income withholding, contempt of court, revocation of licensing privileges, or other appropriate means. Failure to receive the delinquency notice is not a defense in any subsequent proceeding. Sending the notice of delinquency is in the discretion of the clerk if the clerk has, during the previous 12 months, sent a notice or notices of delinquency to the obligor for nonpayment, or if income withholding has been implemented against the obligor or the obligor has been previously found in contempt for nonpayment under the same child support order.~~

~~If the arrearage is not paid in full within 21 days after the mailing of the delinquency notice, or without waiting the 21 days if the clerk has elected not to mail a delinquency notice for any of the reasons provided in this subsection, the clerk shall cause an enforcement order to be issued and shall issue a notice of hearing before a district court judge.~~ Upon request of an obligee, the clerk or a district court judge may order the

obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both. The ~~enforcement~~ order shall ~~order~~ require the obligor to appear and show cause why the obligor should not be subjected to income withholding or adjudged in contempt of court, or both, and shall order the obligor to bring to the hearing records and information relating to the obligor's employment, the obligor's licensing privileges, and the amount and sources of the obligor's disposable income. The ~~enforcement~~ order shall state:

(1) That the obligor is under a court order to provide child support, the name of each child for whose benefit support is due, and information sufficient to identify the order;

(2) That the obligor is delinquent and the amount of overdue support;

(2a) That the court may order the revocation of some or all of the obligor's licensing privileges if the obligor is delinquent in an amount equal to the support due for one month;

(3) That the court may order income withholding if the obligor is delinquent in an amount equal to the support due for one month;

(4) That income withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to G.S. 110-136.10;

(5) That failure to bring to the hearing records and information relating to his employment and the amount and sources of his disposable income will be grounds for contempt;

(6) That if income withholding is not an available or appropriate remedy, the court may determine whether the obligor is in contempt or whether any other enforcement remedy is appropriate.

The ~~enforcement~~ order may be signed by the clerk or a district court judge, and shall be served on the obligor pursuant to G.S. 1A-1, Rule 4, Rules of Civil Procedure. ~~The clerk shall also notify the party to whom support is owed of the pending hearing. The clerk may withdraw the order to the supporting party upon receipt of the delinquent payment.~~ On motion of the person to whom support is ~~owed,~~ owed in a non-IV-D case, with the approval of the district court judge, if the district court judge finds it is in the best interest of the child, no ~~enforcement~~ order shall be issued.

~~When the matter comes before the court, the court shall proceed as in the case of a motion for income withholding under G.S. 110-136.5. If income withholding is not an available or adequate remedy, the court may proceed with contempt, imposition of a lien, or other available, appropriate enforcement remedies.~~

~~This subsection shall apply only to non-IV-D cases, except that the clerk shall issue an enforcement order in a IV-D case when requested to do so by an IV-D obligee.~~

~~(e) The clerk of court shall maintain and make available to the district court judge a list of attorneys who are willing to undertake representation, pursuant to this section, of persons to whom child support is owed. No attorney shall be placed on such list without his permission.~~

~~(f) At least seven days prior to an enforcement hearing as set forth in subsection (d), the clerk must notify the district court judge of all cases to be heard for enforcement~~

~~at the next term, and the judge shall appoint an attorney from the list described in subsection (e) to represent each party to whom support payments are owed if the judge deems it to be in the best interest of the child for whom support is being paid, unless:~~

~~(1) The attorney of record for the party to whom support payments are owed has notified the clerk of court that he will appear for said party; or~~

~~(2) The party to whom support payments are owed requests the judge not to appoint an attorney; or~~

~~(3) An attorney for the enforcement of child support obligations pursuant to Title IV, Part D, of the Social Security Act as amended is available.~~

~~The judge may order payment of reasonable attorney's fees as provided in G.S. 50-13.6.~~

(g) Nothing in this section shall preclude the independent initiation by a party of proceedings for civil contempt or for income withholding."

SECTION 2. G.S. 110-135 reads as rewritten:

"**§ 110-135. Debt to State created.**

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing the State by the responsible parent or parents of the child. Provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such court order. This liability shall attach only to public assistance granted subsequent to June 30, 1975, and only with respect to the period of time during which public assistance is granted, and only if the responsible parent or parents were financially able to furnish support during this period.

The United States, the State of North Carolina, and any county within the State which has provided public assistance to or on behalf of a dependent child shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in accordance with the matching formulas in use during the period for which assistance was paid.

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance. The county attorney or an attorney retained by the county and/or State shall represent the State in all proceedings brought under this section.

A past-due public assistance debt as described in this section may be deemed negotiable and subject to reduction if the public assistance debt is not less than fifteen thousand dollars ($15,000) and the responsible parent continues to be obligated to pay current child support. Upon agreement between the State and the responsible parent, the responsible parent shall pay all child support payments, including payments due on child support arrears, entered by a valid court order for a 24-month period of time. Upon the timely payment of each court-ordered child support obligation during the full 24-month period, including payments due on child support arrears, the State shall reduce the responsible parent's public assistance debt by two-thirds. If the responsible parent is late or defaults on any single payment during the 24-month period, no portion

of the public assistance debt shall be reduced. The responsible parent may attempt to achieve 24 consecutive months of child support payments as often as possible in order to reduce his or her public assistance debt. However, once the responsible parent's public assistance debt has been reduced by two-thirds because of the successful completion of this agreement, the responsible parent shall no longer be eligible for this program. The reduction of public assistance debt as set forth in this section shall be in addition to all other remedies available to the State for the retirement of the debt. This program shall not prevent the State from taking any and all other measures available by law.

Upon the termination of a child support obligation due to the death of the obligor, the Department shall determine whether the obligor's estate contains sufficient assets to satisfy any child support arrearages. If sufficient assets are available, the Department shall attempt to collect the arrearage."

SECTION 3. G.S. 49-14(a) reads as rewritten:

"(a) The paternity of a child born out of wedlock may be established by civil action at any time prior to such child's eighteenth birthday. A ~~certified~~ copy of a certificate of birth of the child shall be attached to the complaint. The establishment of paternity shall not have the effect of legitimation. The social security numbers, if known, of the minor child's parents shall be placed in the record of the proceeding."

SECTION 4. G.S. 130A-101(f) reads as rewritten:

"(f) If the mother was unmarried at all times from date of conception through date of birth, the name of the father shall not be entered on the certificate unless the child's mother and father complete an affidavit acknowledging paternity which contains the following:

(1) A sworn statement by the mother consenting to the assertion of paternity by the father and declaring that the father is the child's natural father;

(2) A sworn statement by the father declaring that he believes he is the natural father of the child;

(3) Information explaining in plain language the effect of signing the affidavit, including a statement of parental rights and responsibilities and an acknowledgment of the receipt of this information; and

(4) The social security numbers of both parents.

The State Registrar, in consultation with the Child Support Enforcement Section of the Division of Social Services, shall develop and disseminate a form affidavit for use in compliance with this section, together with an information sheet that contains all the information required to be disclosed by subdivision (3) of this subsection.

Upon the execution of the affidavit, the declaring father shall be listed as the father on the birth ~~certificate and shall be presumed to be the natural father of the child,~~certificate, subject to the declaring father's right to rescind under G.S. 110-132. The executed affidavit shall be filed with the registrar along with the birth certificate. ~~A~~ In the event paternity is properly placed at issue, a certified copy of the affidavit shall be admissible in any action to establish paternity. The surname of the child shall be determined by the mother, except if the father's name is entered on the certificate, the

mother and father shall agree upon the child's surname. If there is no agreement, the child's surname shall be the same as that of the mother.

The execution and filing of this affidavit with the registrar does not affect rights of inheritance unless the affidavit is also filed with the clerk of court in accordance with G.S. 29-19(b)(2)."

SECTION 5. G.S. 110-139.2(b1) reads as rewritten:

"(b1) The Department of Health and Human Services Child Support Enforcement Agency may notify any financial institution doing business in this State that an obligor who maintains an identified account with the financial institution has a ~~delinquent~~ child support obligation that may be eligible for levy on the account in an amount that satisfies some or all of the ~~delinquency.~~amount of unpaid support owed. In order to be able to attach a lien on and levy an obligor's account, the ~~obligor's child support obligation~~amount of unpaid support owed shall be ~~in arrears in~~ an amount not less than the amount of support owed for six months or one thousand dollars ($1,000), whichever is less.

Upon certification of the ~~arrears amount~~amount of unpaid support owed in accordance with G.S. 44-86(c), the Child Support Agency shall serve or cause to be served upon the ~~obligor~~ obligor, and when the matched account is owned jointly, any other nonliable owner of the account, and the financial institution a notice as provided by this subsection. ~~The notice shall be served in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure, except that a notice may be served on a financial institution in any other manner that the financial institution has agreed to in writing at any time prior to the time the notice is sent.~~ The notice shall include the name of the obligor, the financial institution where the account is located, the account number of the account to be levied to satisfy the lien, the certified ~~arrears amount,~~amount of unpaid support, information for the obligor or account owner on how to remove the lien or contest the lien in order to avoid the levy, and a copy of the applicable law, G.S. 110-139.2. The notice shall be served on the obligor, and any nonliable account owner, in any manner provided in Rule 4 of the North Carolina Rules of Civil Procedure. The financial institution shall be served notice in accordance with Rule 5 of the North Carolina Rules of Civil Procedure. Upon service of the notice, the financial institution shall proceed in the following manner:

(1) Immediately attach a lien to the identified account.

(2) Notify the Child Support Agency of the balance of the account and date of the lien or that the account does not meet the requirement for levy under this subsection.

In order for an obligor or account owner to contest the lien, within 10 days after the obligor or account owner is served with the notice, the obligor or account owner shall send written notice of the basis of the ~~obligor's~~ contest to the Child Support Agency and shall request a hearing before the district court in the county where the support order was entered. The ~~lien may be contested~~obligor account holder may contest the lien only on the basis that the ~~arrearage~~ amount owed is an amount less than the amount of support owed for six months, or is less than one thousand dollars ($1,000), whichever is less, or the ~~obligor~~ contesting party is not the person subject to the court order of

support. The district court may assess court costs against the nonprevailing party. If no response is received from the obligor or account owner within 10 days of the service of the notice, the Child Support Agency shall notify the financial institution to submit payment, up to the total amount of the child support arrears, if available. This amount is to be applied to the debt of the ~~delinquent~~ obligor.

A financial institution shall not be liable to any person for complying in good faith with this subsection. The remedy set forth in this section shall be in addition to all other remedies available to the State for the reduction of the obligor's child support arrears. This remedy shall not prevent the State from taking any and all other concurrent measures available by law.

This levy procedure is to be available for direct use by all states' child support programs to financial institutions in this ~~State.~~State without involvement of the Department."

SECTION 6. This act is effective 90 days after it becomes law.

Minutes
5-3-05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1434 A BILL TO BE ENTITLED AN ACT TO AUTHORIZE,FOR SERVICE OF PROCESS UPON A NATURAL PERSON OR FOR THE PROOF OF PERSONAL SERVICE UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE, CERTAIN ELECTRONIC SIGNATURE CONFIRMATION.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to the committee substitute bill, ~~☐ which changes the title~~, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1434

Short Title:	Electronic Signature Under Rule 4.	(Public)
Sponsors:	Representatives Glazier, Stiller (Primary Sponsors); and Moore.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE, FOR SERVICE OF PROCESS UPON A NATURAL PERSON OR FOR PROOF OF PERSONAL SERVICE UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE, CERTAIN ELECTRONIC SIGNATURE CONFIRMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j)(1) reads as rewritten:

"(1) Natural Person. – Except as provided in subsection (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

e. By mailing a copy of the summons and of the complaint, addressed to the party to be served, and delivering to the addressee, when delivery is confirmed by electronic signature confirmation, an electronic proof of service that is obtained from the United States Postal Service Internet Web site, is

maintained by the United States Postal Service, and is available by fax or mail, upon request."

SECTION 2. G.S. 1A-1, Rule 4(j2)(2) reads as rewritten:

"(2) Registered or Certified ~~Mail~~ Mail, Mail when Delivery is Confirmed by Electronic Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail~~ mail, by mail when delivery is confirmed by electronic signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4)~~G.S. 1-75.10(4), 1-75.10(6), or ~~G.S.~~ 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt or copy of the electronic receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address."

SECTION 3. G.S. 1-75.10 is amended by adding a new subdivision to read:

"(6) Service by Mail When Delivery is Confirmed by Electronic Signature Confirmation. – In the case of service by mail when delivery is confirmed by electronic signature confirmation, by affidavit of the serving party averring all of the following:

a. That a copy of the summons and complaint was deposited in the post office for mailing.

b. That it was in fact received as confirmed by electronic signature confirmation, an electronic proof of service that is obtained from the United States Postal Service Internet Web site, is maintained by the United States Postal Service, and is available by fax or mail, upon request; and this confirmation is evidenced by the attached copy of the electronic signature or other evidence satisfactory to the court of delivery to the addressee.

c. That the copy of the electronic signature or other evidence is attached."

SECTION 4. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

J-IV
5-3-05
Glazier

HOUSE BILL 1434:
Electronic Signature Under Rule 4

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 3, 2005
Introduced by:	Reps. Glazier, Stiller	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1434 would authorize service of process of a summons and complaint on a person by mail when delivery is confirmed by an electronic signature, with electronic proof of service that is obtained from the United States Postal Service (USPS) Internet web site, confirmation which is available by fax or mail, upon request.

CURRENT LAW: Under current law, service of process of a summons and complaint is authorized as follows:

- By delivering them to the defendant or by leaving copies at the defendant's home with a person of suitable age and discretion that resides there.
- By delivering them to or serving them upon an authorized agent.
- By mailing them by registered or certified mail, return receipt requested.
- By depositing them with an authorized designated delivery service, delivering them to the addressee, and obtaining a delivery receipt.

BILL ANALYSIS: House Bill 1434 would -

Section 1.: Amend G.S. 1A-1, Rule 4(j)(1) to authorize service of process by mail when delivery is confirmed by an electronic signature obtained from the USPS web site.

Section 2.: Make a conforming change concerning confirmation of delivery by electronic signature to G.S. 1A-1, Rule 4(j2)(2) which provides that before judgment by default may be had on service of process by mail or designated delivery service, the serving party must provide the court with appropriate proof of service.

Section 3.: Amend G.S. 1-75.10 (Proof of service of summons, defendant appearing in action) which provides how proof of service shall be demonstrated when a defendant appears in an action and challenges the service of process upon him, to add a new subdivision that allows for proof of service by confirmation of electronic signature.

BACKGROUND[1]**:**

- The fee for USPS Signature Confirmation is $1.30. The fee for Certified Mail with Return Receipt is $4.05.
- In 2003, the State Mail Center reportedly handled an average of 200 pieces of Certified Mail per day (which does not include mail from the Attorney General's Office or the Secretary of State). Based on those figures, savings to North Carolina State Government from the use of Signature Confirmation rather than Certified Mail with Return Receipt could exceed $1,000,000.

[1] Information compiled by Accountable Documents System, and provided by Collen Kochanek.

- The states of Georgia and Indiana have amended their statutes to permit the use of USPS Signature Confirmation mail in addition to Certified Mail with Return Receipt.

EFFECTIVE DATE: The bill would become effective October 1, 2005.

H1434e1-SMRI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 1434 DATE 5/3/05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

moves to amend the bill on page 1, line 29

( ) WHICH CHANGES THE TITLE

by by deleting the word "Web" and substituting the word "web";

and on page 2, line 38, by deleting the word "Web" and substituting the word "web"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1434
PROPOSED COMMITTEE SUBSTITUTE H1434-PCS60409-RI-9

Short Title: Electronic Signature Under Rule 4. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE, FOR SERVICE OF PROCESS UPON A NATURAL PERSON OR FOR PROOF OF PERSONAL SERVICE UNDER RULE 4 OF THE RULES OF CIVIL PROCEDURE, CERTAIN ELECTRONIC SIGNATURE CONFIRMATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1A-1, Rule 4(j)(1) reads as rewritten:

"(1) Natural Person. – Except as provided in subsection (2) below, upon a natural person by one of the following:

a. By delivering a copy of the summons and of the complaint to him or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein.

b. By delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute.

c. By mailing a copy of the summons and of the complaint, registered or certified mail, return receipt requested, addressed to the party to be served, and delivering to the addressee.

d. By depositing with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt.

e. By mailing a copy of the summons and of the complaint, addressed to the party to be served, and delivering to the addressee, when delivery is confirmed by electronic signature confirmation, an electronic proof of service that is obtained

from the United States Postal Service Internet Web site, is maintained by the United States Postal Service, and is available by fax or mail, upon request."

SECTION 2. G.S. 1A-1, Rule 4(j2)(2) reads as rewritten:

"(2) Registered or Certified ~~Mail~~ Mail, Mail when Delivery is Confirmed by Electronic Signature Confirmation, or Designated Delivery Service. – Before judgment by default may be had on service by registered or certified ~~mail~~ mail, by mail when delivery is confirmed by electronic signature confirmation, or by a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) with delivery receipt, the serving party shall file an affidavit with the court showing proof of such service in accordance with the requirements of ~~G.S. 1-75.10(4)~~G.S. 1-75.10(4), 1-75.10(6), or ~~G.S.~~ 1-75.10(5), as appropriate. This affidavit together with the return or delivery receipt or copy of the electronic receipt signed by the person who received the mail or delivery if not the addressee raises a presumption that the person who received the mail or delivery and signed the receipt was an agent of the addressee authorized by appointment or by law to be served or to accept service of process or was a person of suitable age and discretion residing in the addressee's dwelling house or usual place of abode. In the event the presumption described in the preceding sentence is rebutted by proof that the person who received the receipt at the addressee's dwelling house or usual place of abode was not a person of suitable age and discretion residing therein, the statute of limitation may not be pleaded as a defense if the action was initially commenced within the period of limitation and service of process is completed within 60 days from the date the service is declared invalid. Service shall be complete on the day the summons and complaint are delivered to the address."

SECTION 3. G.S. 1-75.10 is amended by adding a new subdivision to read:

"(6) Service by Mail When Delivery is Confirmed by Electronic Signature Confirmation. – In the case of service by mail when delivery is confirmed by electronic signature confirmation, by affidavit of the serving party averring all of the following:

a. That a copy of the summons and complaint was deposited in the post office for mailing.

b. That it was in fact received as confirmed by electronic signature confirmation, an electronic proof of service that is obtained from the United States Postal Service Internet Web site, is maintained by the United States Postal Service, and is available by fax or mail, upon request; and this confirmation is evidenced by the attached copy of the electronic signature or other evidence satisfactory to the court of delivery to the addressee.

c. That the copy of the electronic signature or other evidence is attached."

SECTION 4. This act becomes effective October 1, 2005, and applies to actions filed on or after that date.

House Pages

Name Of Committee: JUDICIARY IV Date: MAY 3, 2005

1. Name: Juan Tesé
   County: Wake
   Sponsor: Representative Miller
2. Name: Shari Henderson
   County: Granville
   Sponsor: Representative Crawford
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: HINES
2. Name: BAREFOOT
3. Name: WOMACK
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — May 3, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Melvin E. Matthews, Jr.	ADS Cary, N.C.
Colleen Kochanek	ADS
Jane Smith	DHHS/DSS
Lisa Dawson	Assistant Attorney General
Barry Mille	DHHS/DSS
Pamela Best	AOC
Erin Kinney	NC Conservation Network
Sara Schmidt	NC Justice Center
Tye Hunter	IDS
Patricia Rawlings	NCACC
Susan E. Brooks	IDS

VISITOR REGISTRATION SHEET

JUDICIARY IV — MAY 3, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	NC Sheriffs' Assn.
[illegible]	[illegible]
Janet Mason	Institute of Government

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Thursday, May 5, 2005

The House Committee on Judiciary IV met on Thursday, May 5, 2005, in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were in attendance: Vice Chairman Glazier, Vice Chairman Joe Kiser, Representatives Culpepper, Daughtry, Holloway, Justus, Martin and Ray. Staff members Tricia Griffin, Jennifer McGinnis and Steve Rose also attended the meeting. A Visitor's Registration list is attached to the minutes.

Presiding Chairman Glazier called the meeting to order and introduced the pages and sergeants-at-arms at the meeting.

HB 1271 – AN ACT TO AMEND AUCTIONEER LICENSING LAWS was the first bill on the agenda and Rep. Culpepper was recognized to explain the bill. A Proposed Committee Substitute was handed out and adopted at the request of the Chairman. After a detailed explanation of the Proposed Committee Substitute and discussion, Rep. Daughtry moved to give the Proposed Committee Substitute a favorable report and to give the bill an unfavorable report. The motion carried.

HB 1485 – SEARCH WARRANTS/AUDIO 7 VIDEO TRANSMISSION was explained by Rep. Culpepper as set forth in the Summary. Rep. Ray moved to give the bill a favorable report and the motion carried.

The meeting was adjourned at 10:20 a.m.

Representative Glazier
Presiding Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 1271: Committee Report, Copy of Bill, Bill Analysis, Committee Substitute; HB 1485: Committee Report, Copy of Bill, Bill Analysis, Listing of Pages, Visitor Registration.

MINUTES
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Lucille Thompson

Representative Glacier	**Lucille Thompson**
President Chairman	**Committee Assistant**

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, May 5, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Rick Glazier, Presiding Chairman

AGENDA ITEMS:

HB 1271 - AMEND AUCTIONEER LICENSING LAWS
Representative Culpepper

HB 1485 – SEARCH WARRANTS/AUDIO 7 VIDEO TRANSMISSION
Representative Culpepper

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1271 A BILL TO BE ENTITLED AN ACT TO AMEND CERTAIN LAWS PERTAINING TO AUCTIONS AND AUCTIONEERS.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1271

Short Title:	Amend Auctioneer Licensing Laws.	(Public)
Sponsors:	Representative Culpepper.	
Referred to:	Judiciary IV.	

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS PERTAINING TO AUCTIONS AND AUCTIONEERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85B-1 is amended by adding the following new subdivisions to read:

"**§ 85B-1. Definitions.**

For the purposes of this Chapter the following definitions shall apply:

...

(8) 'Auctioneering', 'Conduct of Auction', or 'Conduct of Business' means, in addition to the actual calling of bids, any of the following:

a. Contracting for auction.

b. Accepting consignments of items for sale at auction.

c. Advertising an auction.

d. Offering items for sale at auction.

e. Accepting payment or disbursing monies for items sold at auction.

f. Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.

(9) 'Consignment' means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.

(10) 'Designated person' means any person approved by the Board to have the authority to transact business for a licensed auction firm."

SECTION 2. G.S. 85B-2(b) reads as rewritten:

"(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for ~~compensation.~~compensation or any person who or entity that accepts consignments to be sold at auction."

SECTION 3. G.S. 85B-2 is amended by adding the following new subsection to read:

"(c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer."

SECTION 4. G.S. 85B-4(d) reads as rewritten:

"(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in ~~Raleigh,~~North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to

determine whether the applicant possesses the good moral character or other qualifications for licensure."

SECTION 5. G.S. 85B-7 reads as rewritten:

"**§ 85B-7. Conduct of auction; records.**

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain ~~accounting~~ consignment records and enter in them, upon receipt of goods for auction and before ~~their~~ sale, the name and address of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. ~~The accounting~~Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain ~~records~~ sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agent at reasonable times."

SECTION 6. G.S. 85B-7.1(a) reads as rewritten:

"(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. ~~A licensee who disburses funds on auction day shall prepare a receipt or settlement statement for the disbursed funds that contains the name and address of the person receiving the disbursement and the amount of the disbursement. The receipt or statement shall be signed by the licensee and the person receiving the disbursement.~~At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee's agent and by the person receiving the disbursement."

SECTION 7. G.S. 85B-8(e) reads as rewritten:

"(e) The Commission may investigate complaints and conduct hearings as follows:

(1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds."

SECTION 8. This act is effective when it becomes law.

HOUSE BILL 1271:
Amend Auctioneer Licensing Laws

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 5, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Trina Griffin
Version:	PCS to First Edition H1271-CSSV-19		Committee Counsel

SUMMARY: ***House Bill 1271 makes several amendments to the auctioneer licensing laws. The Proposed Committee Substitute makes one clarifying change in Section 2.***

CURRENT LAW[1]: Enacted in 1973, the North Carolina Auctioneers Law, Chapter 85B of the General Statutes, establishes a five-member Commission, known as the Auctioneer Licensing Board. The Auctioneer Licensing Board is responsible for the administration and enforcement of the Auctioneers Law, which establishes specific standards of conduct that serve to protect the public, affords a means of redress of grievances of any person suffering damage by reason of misconduct relating to sales at auction, and provides a means of monetary restitution for loss suffered.

The Auctioneer Licensing Board assures that the qualifications and activities of those engaged in auctioneering are in accord with the law and in the best interest of the public; receives and acts upon license applications; issues, suspends or revokes licenses; adopts rules and regulations, and takes other actions as may be necessary to enforce the provisions of the Auctioneers Law. The Licensing Board is not a board of arbitration and has no jurisdiction to settle disputes between parties concerning the rate or division of commissions, pay of assistants, and similar matters of contract.

The Board holds monthly public meetings; sponsors and underwrites educational seminars and other forms of educational projects having to do with the advancement of auction profession in North Carolina; administers auctioneer examinations; investigates complaints, and holds administrative hearings as needed.

BILL ANALYSIS:

Section 1. Definitions.

Section 1 of the bill adds definitions for the following terms to the Auctioneer Licensing Law:

- "Auctioneering," "conduct of auction," or "conduct of business" – These terms are currently defined in the Board's administrative rules. This provision would simply codify into statute the definition for these terms.
- "Consignment" – This term is new to and has not been previously defined in this Chapter. The term is defined as the act of delivering or transferring goods or real estate to an auctioneer in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale.
- "Designated person" – An auction firm must be licensed by the Board even though no owner or officer of the firm acts as an auctioneer. Where a license is issued to an auction firm, authority to transact business is limited to the person designated in the application and named in the license. The "designated person" is required to take a written exam demonstrating an

[1] This information was obtained from the North Carolina Auctioneer Licensing Board website – www.ncalb.org.

understanding of the law relating to auctions. While the current statute refers to a "designated person," the term is not defined. Section 1 adds a definition for a designated person.

Section 2. Modification to exception provision.

Certain sales are exempt from the provisions of the Auctioneer Law, such as auctions held by charitable, religious, or civic organizations or auctions held by a public authority or required to be held by law. However, the exception for the following types of sales do not apply if a person or entity is conducting or organizing the sale for compensation:

- Sales at auction conducted by any public authority.
- Any sale required by law to be at auction.
- Sales conducted by any charitable or religious organization.
- Sales conducted by a civic club, not exceeding one sale per year.
- Sales of collateral, sales conducted to enforce carriers' or warehousemen's liens, bulk sales, sales of goods, and resales of goods conducted under the UCC.

Section 2 of the bill would add new language to this "exception to the exceptions" provision by stating that in addition to auctions for compensation, the exception would not apply to these sales where the person or entity conducting or organizing the sale accepts consignments to be sold at auction where the consignor receives any proceeds from the sale. The intent of this new language to prevent people from circumventing the "charitable" auctions exception where consignors are actually profiting from the sale.

Section 3. Motor vehicle auctioneers.

Currently, sales of motor vehicles by licensed motor vehicle dealers are exempt from the Auctioneers Law. Section 3 of the bill complements current language in Chapter 20 and clarifies that auctioneers hired by motor vehicle dealers to auction motor vehicles are not exempt from the provisions of Chapter 85B.

Section 4. Change in office location.

In order to be licensed as an auctioneer, a person is required to take an examination. The examination is given twice a year in Raleigh, and at other times and places designated by the Commission. Recently, the Board has moved its office to Fuquay-Varina and can offer the examinations at that location. Therefore, Section 4 of the bill removes the reference to Raleigh.

Sections 5 & 6. Recordkeeping changes.

Sections 5 and 6 make changes to two statutes related to recordkeeping. These changes require that additional detail be provided in the records of sales at auction maintained by the licensee and in the settlement statement provided to the seller or consignor of goods. These changes make the statutes more consistent with other statutes dealing with the consignment of goods.

Section 7. License suspension.

Several other licensing boards have authority summarily suspend a license when the health, safety, or welfare of the public is at risk due to the activities of a licensee. Section 7 of the bill would authorize the Auctioneer Licensing Board to suspend a license when the health, safety, and welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds. The suspension proceedings would be subject to the provisions of Chapter 150B.

EFFECTIVE DATE: This act is effective when it becomes law.

Minutes
J. IV
May 5, 2005

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H — Passed — D

HOUSE BILL 1271
PROPOSED COMMITTEE SUBSTITUTE H1271-PCS70437-SV-19

Short Title: Amend Auctioneer Licensing Laws. (Public)

Sponsors:

Referred to:

April 19, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND CERTAIN LAWS PERTAINING TO AUCTIONS AND AUCTIONEERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 85B-1 is amended by adding the following new subdivisions to read:

"**§ 85B-1. Definitions.**

For the purposes of this Chapter the following definitions shall apply:

...

(8) 'Auctioneering', 'conduct of auction', or 'conduct of business' means, in addition to the actual calling of bids, any of the following:

a. Contracting for auction.

b. Accepting consignments of items for sale at auction.

c. Advertising an auction.

d. Offering items for sale at auction.

e. Accepting payment or disbursing monies for items sold at auction.

f. Otherwise soliciting, arranging, sponsoring, or managing an auction or holding oneself out as an auctioneer or auction firm.

(9) 'Consignment' means, unless otherwise modified by written agreement, the act of delivering or transferring goods or real estate in fact or constructively to an auctioneer or the auctioneer's agent in trust for the purpose of resale at auction whereby title does not pass to the buyer until there is an action indicating a sale. For purposes of this section, consignment may also mean a bailment for sale.

(10) 'Designated person' means any person approved by the Board to have the authority to transact business for a licensed auction firm."

SECTION 2. G.S. 85B-2(b) reads as rewritten:

"(b) The exceptions provided in subdivisions (2), (4), (9), (9a) and (11) of subsection (a) of this section shall not apply to any person or entity engaged in the business of organizing, arranging, or conducting auction sales for ~~compensation.~~compensation or any person who or entity that accepts consignments to be sold at auction where the consignor receives any proceeds from the sale."

SECTION 3. G.S. 85B-2 is amended by adding the following new subsection to read:

"(c) The exceptions provided in subdivision (7) of subsection (a) of this section shall not apply to any auctioneer licensed pursuant to this Chapter employed to be an auctioneer of motor vehicles for a licensed motor vehicle dealer, while conducting an auction for that dealer."

SECTION 4. G.S. 85B-4(d) reads as rewritten:

"(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in ~~Raleigh,~~North Carolina, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to

determine whether the applicant possesses the good moral character or other qualifications for licensure."

SECTION 5. G.S. 85B-7 reads as rewritten:

"**§ 85B-7. Conduct of auction; records.**

(a) No licensee shall conduct an auction in this State without first having a written agreement with the owner of any property to be sold. The agreement must contain the terms and conditions upon which the auctioneer received the goods for sale. The licensee shall provide the owner with a signed copy of the agreement and shall keep at least one copy for his own records for two years from the date of the agreement. Copies of all contracts shall be made available to the Commission or its designated agent upon request.

(b) Each licensee shall maintain ~~accounting~~ consignment records and enter in them, upon receipt of goods for auction and before ~~their~~ sale, the name and address of the person who employed the licensee to sell the goods at auction and the name and address of the owner of the goods to be sold. The consignment record shall contain an adequate description of the goods to be sold and shall be sufficient to positively identify each item. ~~The accounting~~Consignment records shall be open for inspection by the Commission or its designated agent at reasonable times.

(c) All licensees shall have their licenses available at each auction they conduct.

(d) Each licensee shall maintain ~~records~~ sales records, which identify the purchaser of all goods sold by name, address, and when possible, telephone number. The sales records shall contain an adequate description of the items sold and must be sufficient to positively identify the owner of the property. Sales records shall be maintained for a period of not less than two years from the date of sale. Sales records shall be open for inspection by the Commission or its designated agent at reasonable times."

SECTION 6. G.S. 85B-7.1(a) reads as rewritten:

"(a) Each licensee who does not disburse all funds to the seller on auction day shall maintain a trust or escrow account and shall deposit in the account all funds that are received for the benefit of another person and are not disbursed to the seller on auction day. The licensee shall deposit funds that are not disbursed on auction day with an insured bank or savings and loan association located in North Carolina. ~~A licensee who disburses funds on auction day shall prepare a receipt or settlement statement for the disbursed funds that contains the name and address of the person receiving the disbursement and the amount of the disbursement. The receipt or statement shall be signed by the licensee and the person receiving the disbursement.~~At or before the time of all final settlements, the auctioneer shall provide the seller or consignor with a settlement statement, which includes a description of all goods sold, the selling price of the goods sold, the net proceeds due to the seller or consignor, the name and address of the person receiving the disbursement, and the amount of the disbursement. All settlement statements shall be signed by the licensee or the licensee's agent and by the person receiving the disbursement."

SECTION 7. G.S. 85B-8(e) reads as rewritten:

"(e) The Commission may investigate complaints and conduct hearings as follows:

(1) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(2) The Commission may, upon its own motion, summarily suspend a license when the health, safety, or welfare of the public is at risk, such as in the event of a potential loss of consigned items or potential loss of funds."

SECTION 8. This act is effective when it becomes law.

Minutes
5-5-05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1485 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT SEARCH WARRANTS MAY BE OBTAINED BY AUDIO/VIDEO TRANSMISSIONS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1485

Short Title:	Search Warrants/Audio & Video Transmission.	(Public)
Sponsors:	Representatives Culpepper; and Starnes.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT SEARCH WARRANTS MAY BE OBTAINED BY AUDIO/VIDEO TRANSMISSIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-245(a) reads as rewritten:

"(a) Before acting on the application, the issuing official may examine on oath the applicant or any other person who may possess pertinent information, but information other than that contained in the affidavit may not be considered by the issuing official in determining whether probable cause exists for the issuance of the warrant unless the information is either recorded or contemporaneously summarized in the record or on the face of the warrant by the issuing official. The information must be shown by one or more of the following:

(1) Affidavit; or

(2) Oral testimony under oath or affirmation before the issuing official; or

(3) Oral testimony under oath or affirmation presented by a sworn law enforcement officer to the issuing official by means of an audio and video transmission in which both parties can see and hear each other. Prior to the use of audio and video transmission pursuant to this subdivision, the procedures and type of equipment for audio and video transmission shall be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts and approved by the Administrative Office of the Courts."

SECTION 2. This act becomes effective October 1, 2005.

HOUSE BILL 1485:
Search Warrants/Audio & Video Transmission

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 4, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Steven Rose
Version:	First Edition		Committee Counsel

SUMMARY: HB 1485 permits oral testimony by a law enforcement officer in support of a search warrant application to be received by the issuing official by means of a two-way audio and visual connection.

CURRENT LAW: G.S. 15A-245(a) provides that in considering an application for a search warrant, an issuing official may examine the applicant or any other person with pertinent information. The person being examined must be under oath. In order for information beyond that which is contained in the affidavit accompanying the application to be considered, it must be recorded or contemporaneously summarized in the record or on the face of the warrant.

BILL ANALYSIS: HB 1485 provides that the additional information must be by affidavit, oral testimony under oath or affirmation, or oral testimony under oath or affirmation by a sworn law enforcement officer to the issuing officer by means of a two-way audio and visual transmission. The procedures and equipment used for the two-way transmission must be submitted to the Administrative Office of the Courts by the senior regular resident superior court judge and the chief district court judge for a judicial district or set of districts, and must be approved by the AOC.

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

H1485e1-SMRL

House Pages

Name Of Committee: _____ Dat _____

1. Name: Kevin Myers
   County: Johnston
   Sponsor: Langdon
2. Name: Zack Joyner
   County: Caston
   Sponsor: Rep. Fisher
3. Name: Cameron Harwick
   County: Rowan
   Sponsor: Rep. Coates
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Fred Hines
2. Name: Jim Womack } House Sgt @ Arms
3. Name: Brad Barefoot
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — 5-05-05

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Brian E. Marshburn	N.C. Auctioneer Licensing Bd 602 Stellata Dr. Fuquay-Varina.
Robert A. Hamilton	NC Auctioneer Licensing Board 602 Stellata Drive, Fuquay-Varina
Lorrie Ellswick	PNG
Bill Forbes	Auctioneer - Past Member/Chair NC Auctioneers Commission
Jeff Gray	atty., NCALM

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 10, 2005

The House Committee on Judiciary IV met on Tuesday, May 10, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Bill Culpepper, Leo Daughtry, Carolyn Justus, Grier Martin, Earline Parmon and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced Intern Liz Clarke, and the pages and sergeants-at-arms serving at the meeting.

Representative Glazier, a Primary Sponsor of House Bill 448 – COMPLAINTS AGAINST SCHOOL BOARD MEMBERS, was introduced to speak on the bill. A motion by Representative Glazier to adopt Amendment #1 was adopted. Discussion followed with Mr. Harry Wilson, staff attorney for the State Board of Education, and Ms. LeAnn Winner, Lobbyist for the School Board Association, answering questions from the members. A motion to adopt Amendment #2, made by Representative Glazier, was adopted. Representative Daughtry moved that the amendments be rolled into a committee substitute and that the committee substitute for House Bill 448 be given a favorable report, unfavorable to the original bill. The motion was adopted.

Representative Culpepper, Primary Sponsor of HB 1486 – FELONY DEATH BY VEHICLE, was introduced to speak on the bill. Representative Justus moved to adopt the Proposed Committee Substitute for discussion. The motion passed. Discussion followed. A motion was made by Representative Culpepper to adopt an amendment to the bill. The motion passed. Representative Culpepper moved to roll the amendment into the Committee Substitute and that the committee substitute for HB 1486 be given a favorable report, unfavorable to the original bill. The motion was adopted.

Representative Glazier was introduced to preside as Representative Weiss, Primary Sponsor of HB 1176 – PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS, spoke on the bill. The motion by Representative Weiss to adopt Amendment #1 was adopted. The motion by Representative Weiss to adopt Amendment #2 was adopted. Discussion followed with Ms. Margaret Westbrook, Wake County Bar Association, and Ms. Pamela Best, Administrative Office of the Courts, answering questions from the members of the committee. Representative Weiss moved to adopt a perfecting amendment; the motion was adopted. Representative Weiss moved that the amendments be rolled into a new Proposed Committee Substitute and give a favorable report to Proposed Committee Substitute #2 as amended; unfavorable to Committee Substitute #1. The motion was adopted.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 448: Committee Report, HB 448, Bill Analysis, Amendments (2), Committee Substitute; HB 1486: Committee Report, HB 1486, Bill Analysis, Committee Substitute; HB 1176: Committee Report, HB 1176, Bill Analysis, Amendments (2), Committee Substitute, Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 10, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 448 – COMPLAINTS AGAINST SCHOOL BD. MEMBERS
Representatives Glazier, Yongue and Johnson

HB 1486 – FELONY DEATH BY VEHICLE
Representative Culpepper

HB 1484 – DWI AFTER CONVICTION OF DWI+DEATH
Representative Culpepper

HB 1176 – PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS
Representatives Weiss, Glazier, Goodwin and Harrison

AJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 448 A BILL TO BE ENTITLED AN ACT TO ESTABLISH A FAIR AND ORDERLY PROCESS FOR THE DISPOSITION OF COMPLAINTS AGAINST LOCAL SCHOOL BOARD MEMBERS.

☐ 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, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 448

Short Title:	Complaints Against School Board Members.	(Public)
Sponsors:	Representatives Glazier, Yongue, Johnson (Primary Sponsors); and England.	
Referred to:	Education.	

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A FAIR AND ORDERLY PROCESS FOR THE DISPOSITION OF COMPLAINTS AGAINST LOCAL SCHOOL BOARD MEMBERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-39 reads as rewritten:

"**§ 115C-39. Removal of board members; suspension of duties by State Board.**

~~(a) In case the State Board of Education has sufficient evidence that any member of a local board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, the State Board of Education shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education.~~

(a) Policy. – The General Assembly finds that service on a local board of education is a public trust that requires each board member to demonstrate honesty, integrity, and ethical behavior and that the great majority of board members have demonstrated and continue to demonstrate these qualities. When board members do not display these qualities, public schools are hindered in their efforts to instill in students the moral and ethical values promoted under G.S. 115C-81(h).

It is the policy of the State of North Carolina that members of local boards of education must exhibit honesty, integrity, and ethical behavior in their personal lives as well as in the performance of their duties as board members.

(a1) Review of Evidence. – Complaint Against a Board Member. – Any person may submit evidence to the State Board of Education that a member of a local board of education:

(1) Is not capable of discharging, or is willfully failing to discharge, the duties of the office as required by law, or

(2) Is guilty of illegal, immoral, or disreputable conduct that substantially impairs the member's ability to discharge the duties of the office. The entry of a plea of guilty or nolo contendere to, or the conviction of, any felony or any Class 1 or Class 2 misdemeanor shall be presumptive evidence of illegal, immoral, or disreputable conduct.

(a2) Review of Evidence. – Upon receipt of such evidence, the chair of the State Board of Education shall, in his or her discretion, either (i) review the evidence to determine whether, if taken as true, it would be sufficient to establish either of the grounds set out in subsection (a1) of this section or (ii) refer the evidence to the entire Board to make the determination. The chair or the Board may consider evidence of illegal conduct that occurred prior to the person becoming a member of the local board as evidence of illegal, immoral, or disreputable conduct that substantially impairs the member's ability to discharge the duties of the office. The determination shall be based solely upon the evidence that has been submitted pursuant to subsection (a1) of this section.

If the chair or the Board find that, if taken as true, the evidence would be sufficient to establish either of the grounds set out in subsection (a1) of this section, the chair or the Board shall notify the member against whom the complaint has been made and all other members of the local board.

(a3) Investigation and Determination by the Local Board. – Upon receipt of notice under subsection (a2) of this section, the local board of education shall conduct a hearing to determine the truthfulness of the charges and whether the conduct substantially impairs the member's ability to perform the duties of the office. The local board shall provide the member with proper notice of the hearing and the opportunity to be represented by counsel, present evidence, and examine and cross-examine witnesses. If the local board finds the charges to be true and that the conduct substantially impairs the member's ability to perform the duties of the office, it shall declare the office vacant. The local board shall record its findings in the official minutes of the board.

(b) Suspension of Powers and Duties. – In the event the State Board of Education has appointed an interim superintendent under G.S. 115C-105.39 and the State Board determines that the local board of education has failed to cooperate with the interim superintendent, the State Board shall have the authority to suspend any of the powers and duties of the local board and to act on its behalf under G.S. 115C-105.39."

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

HOUSE BILL 448:
Complaints Against School Board Members

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 10, 2005
Introduced by:	Reps. Glazier, Yongue, Johnson	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 448 would amend the current law concerning removal of board members from local boards of education to permit any person to submit evidence to the State Board of Education that a member (i) is incapable or is willfully failing to discharge the duties of the member's office; or (ii) has engaged in illegal, immoral, or disreputable conduct that substantially interferes with the member's ability to discharge office's duties. In addition, the bill would establish more detailed procedures for processing complaints against school board members.***

CURRENT LAW: G.S. 115C-39 currently requires that if the State Board of Education (Board) has sufficient evidence that any member of a local board of education is incapable of or is not discharging the duties of their office or is guilty of any immoral or disreputable conduct, that the Board notify the local board to investigate the complaints. If the charges are found to be true, the member's office must be declared vacant.

BILL ANALYSIS: House Bill 448 would –

- Authorize any person to submit evidence to Board that a local school board member: (i) is incapable or is willfully failing to discharge the duties of member's office; or (ii) has engaged in illegal, immoral, or disreputable conduct that substantially interferes with the member's ability to discharge the duties of the office. Under the bill, entry of a plea of guilty or nolo contendere to, or the conviction of, a felony or Class 1 or 2 misdemeanor would be presumptive evidence of that conduct.
- Require that the chair of the Board determine if evidence received would, if taken as true, establish grounds for removal, or refer the evidence to the full Board for this determination. The chair or Board would be authorized to consider evidence of a member's illegal conduct that occurred prior to the time member took office. Upon a finding that evidence, if true, would establish grounds for removal of member, the chair or Board is directed to refer the matter to the local board of education, which must conduct a hearing to determine the truthfulness of the charges and whether the conduct substantially impairs the member's ability to perform the duties of the office. At the hearing the member may be represented by counsel, present evidence, and examine and cross-examine witnesses. If, at the conclusion of the hearing, the complaint against the local school board member is found to be true, the local board of education is required to declare the member's office vacant.

BACKGROUND: Other existing statutes that allow for removal from office based upon immoral or disreputable conduct, or failure to perform required duties include:

- **G.S. 115C-274 (Removal)** which provides that local boards of education are authorized to remove a superintendent who is guilty of immoral or disreputable conduct or who fails or refuses to perform duties required by law.

- **G.S. 115D-19. (Removal of trustees)** which provides that boards of trustees of community colleges are authorized to remove a trustee who is incapable or is not discharging the duties of their office or is guilty of any immoral or disreputable conduct.

EFFECTIVE DATE: This bill would be effective when it becomes law.

H0448e1-SMRI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 448 DATE 5/10/05

S. B. No. ~~6~~ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Glazier
Sen.)

1 moves to amend the bill on page 2, line 1

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the phrase "Review of Evidence. —".

4

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 448 DATE 5/10/05

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

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

1 moves to amend the bill on page ~~2~~ 2 RSC, line 9

2 ( ) WHICH CHANGES THE TITLE

3 by deleting the phrase "or Class 2".

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 448
PROPOSED COMMITTEE SUBSTITUTE H448-PCS80368-RI-13

Short Title: Complaints Against School Board Members. (Public)

Sponsors:

Referred to:

March 2, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A FAIR AND ORDERLY PROCESS FOR THE DISPOSITION OF COMPLAINTS AGAINST LOCAL SCHOOL BOARD MEMBERS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-39 reads as rewritten:

"**§ 115C-39. Removal of board members; suspension of duties by State Board.**

~~(a) In case the State Board of Education has sufficient evidence that any member of a local board of education is not capable of discharging, or is not discharging, the duties of his office as required by law, or is guilty of immoral or disreputable conduct, the State Board of Education shall notify the chairman of such board of education, unless such chairman is the offending member, in which case all other members of such board shall be notified. Upon receipt of such notice there shall be a meeting of said board of education for the purpose of investigating the charges, and if the charges are found to be true, such board shall declare the office vacant: Provided, that the offending member shall be given proper notice of the hearing and that record of the findings of the other members shall be recorded in the minutes of such board of education.~~

(a) Policy. – The General Assembly finds that service on a local board of education is a public trust that requires each board member to demonstrate honesty, integrity, and ethical behavior and that the great majority of board members have demonstrated and continue to demonstrate these qualities. When board members do not display these qualities, public schools are hindered in their efforts to instill in students the moral and ethical values promoted under G.S. 115C-81(h).

It is the policy of the State of North Carolina that members of local boards of education must exhibit honesty, integrity, and ethical behavior in their personal lives as well as in the performance of their duties as board members.

(a1) Complaint Against a Board Member. – Any person may submit evidence to the State Board of Education that a member of a local board of education:

(1) Is not capable of discharging, or is willfully failing to discharge, the duties of the office as required by law, or

(2) Is guilty of illegal, immoral, or disreputable conduct that substantially impairs the member's ability to discharge the duties of the office. The entry of a plea of guilty or nolo contendere to, or the conviction of, any felony or any Class 1 misdemeanor shall be presumptive evidence of illegal, immoral, or disreputable conduct.

(a2) Review of Evidence. – Upon receipt of such evidence, the chair of the State Board of Education shall, in his or her discretion, either (i) review the evidence to determine whether, if taken as true, it would be sufficient to establish either of the grounds set out in subsection (a1) of this section or (ii) refer the evidence to the entire Board to make the determination. The chair or the Board may consider evidence of illegal conduct that occurred prior to the person becoming a member of the local board as evidence of illegal, immoral, or disreputable conduct that substantially impairs the member's ability to discharge the duties of the office. The determination shall be based solely upon the evidence that has been submitted pursuant to subsection (a1) of this section.

If the chair or the Board find that, if taken as true, the evidence would be sufficient to establish either of the grounds set out in subsection (a1) of this section, the chair or the Board shall notify the member against whom the complaint has been made and all other members of the local board.

(a3) Investigation and Determination by the Local Board. – Upon receipt of notice under subsection (a2) of this section, the local board of education shall conduct a hearing to determine the truthfulness of the charges and whether the conduct substantially impairs the member's ability to perform the duties of the office. The local board shall provide the member with proper notice of the hearing and the opportunity to be represented by counsel, present evidence, and examine and cross-examine witnesses. If the local board finds the charges to be true and that the conduct substantially impairs the member's ability to perform the duties of the office, it shall declare the office vacant. The local board shall record its findings in the official minutes of the board.

(b) Suspension of Powers and Duties. – In the event the State Board of Education has appointed an interim superintendent under G.S. 115C-105.39 and the State Board determines that the local board of education has failed to cooperate with the interim superintendent, the State Board shall have the authority to suspend any of the powers and duties of the local board and to act on its behalf under G.S. 115C-105.39."

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

Z.O. 5/10/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
H.B. 1486 A BILL TO BE ENTITLED AN ACT TO PROVIDE FOR FIRST AND SECOND DEGREE FELONY DEATH BY VEHICLE.

☐ 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, unfavorable as to the original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

HOUSE BILL 1486

Short Title:	Felony Death by Vehicle.	(Public)
Sponsors:	Representatives Culpepper; and Starnes.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FIRST AND SECOND DEGREE FELONY DEATH BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) First Degree Felony Death by Vehicle. – A person commits the offense of first degree felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the ~~death.~~death, and any of the following factors is present at the time of the commission of the crime:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more at a relevant time after driving.

(2) Aggressive driving as defined in G.S. 20-141.6.

(3) A violation of G.S. 20-28 or G.S. 20-28.1.

(4) One or more prior convictions for an impaired driving offense during the seven years before the current offense.

(5) A violation under G.S. 20-141.5 of speeding to elude arrest.

(6) A violation under G.S. 20-141 involving speeding at least 30 miles per hour over the legal speed limit.

(7) A violation of G.S. 20-217.

(a2) Second Degree Felony Death by Vehicle. – A person commits the offense of second degree felony death by vehicle if that person unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and commission of that offense is a proximate cause of the death and none of the aggravating factors in subsection (a1) of this section are present.

~~(a2)~~(a3) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person

while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. – ~~Felony~~ First degree felony death by vehicle is a Class ~~G~~ I felony. Second degree felony death by vehicle is a Class E felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 1486: Felony Death By Vehicle

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 10, 2005
Introduced by:	Rep. Culpepper	**Summary by:**	Steven Rose
Version:	PCS H1486-CSRL-20		Committee Counsel

SUMMARY: HB 1486 amends the felony death by vehicle provisions of G.S. 20-141.4 to create two classifications of felony death by vehicle, first degree and second degree.

CURRENT LAW: Currently, G.S. 20-141.4 addresses the offenses of felony and misdemeanor death by vehicle. Felony death by vehicle is the unintentional death of another while engaged in the offense of impaired driving. It is a Class G felony.

BILL ANALYSIS: HB 1486 creates two classes of felony death by vehicle. First degree death by vehicle involves impaired driving and certain additional factors. The additional factors are:

1. Gross impairment or a blood alcohol content of .16.
2. Driving while license was revoked for impaired driving.
3. One or more impaired driving convictions during the preceding seven years.
4. Speeding to elude arrest that occurs in a school zone or a highway work zone.

Second degree felony death by vehicle involves impaired driving, but none of the aggravating factors. It is the same as felony death by vehicle under the existing statute.

First degree felony death by vehicle is a Class E felony (presumptive sentence range is 20 months intermediate to 59 months active). Second degree is a Class I felony (presumptive sentence is four months community service to 10 months active).

EFFECTIVE DATE: The act is effective December 1, 2005 and applies to offenses committed on or after that date.

h1486PCS-SMRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1486
PROPOSED COMMITTEE SUBSTITUTE H1486-PCS80365-RL-23

Short Title: Felony Death by Vehicle. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR FIRST AND SECOND DEGREE FELONY DEATH BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) First Degree Felony Death by Vehicle. – A person commits the offense of first degree felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the ~~death.~~death, and any of the following factors is present at the time of the commission of the crime:

(1) Gross impairment of the defendant's faculties while driving or an alcohol concentration of 0.16 or more at a relevant time after driving.

(2) A violation of G.S. 20-28 or G.S. 20-28.1, and the revocation was an impaired driving revocation under G.S. 20-28.2(a).

(3) One or more prior convictions for an impaired driving offense during the seven years before the current offense.

(4) A violation under G.S. 20-141.5(b) of felony speeding to elude arrest.

(a2) Second Degree Felony Death by Vehicle. – A person commits the offense of second degree felony death by vehicle if that person unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and commission of that offense is a proximate cause of the death and none of the aggravating factors in subsection (a1) of this section are present.

~~(a2)~~(a3) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving

under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(b) Punishments. – ~~Felony~~ First degree felony death by vehicle is a Class ~~G~~ E felony. Second degree felony death by vehicle is a Class G felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Committee Substitute for
H.B. 1176 A BILL TO BE ENTITLED AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, 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 the committee substitute bill ~~as amended~~ #2, ~~☒ which changes the title,~~ unfavorable as to ~~the original~~ Committee Substitute Bill.~~#~~

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

03/19/03

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1176

Committee Substitute Favorable 5/2/05

Short Title: Property Exempt From Enforcement Actions. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(5a) The debtor's aggregate interest, not to exceed four thousand dollars ($4,000) in value, in any wedding and engagement rings of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's

past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(13) The earnings of the debtor for the debtor's personal services, at any time within 60 days preceding an order under G.S. 1-362, an execution, or the filing of a petition for bankruptcy when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of the debtor or a family supported wholly or in part by the debtor's labor. Recent earnings exempt under this subdivision may only be waived pursuant to subdivision (2) of subsection (c) of this section.

(b) ~~Definition. "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~ (4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6.

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve ~~him~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove

service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice ~~must~~ shall be substantially in the following form:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
_____ Judgment Creditor vs. _____	NOTICE OF PETITION (OR MOTION) TO SET OFF DEBTOR'S EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

(1) ~~His~~ The debtor's assets, including their location;

(2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;

(3) The property ~~which~~ that ~~he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
Judgment Creditor)) vs.)) Judgment Debtor)	SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;
2. That I was born on _____;
(date of birth)
3. That I am (married to _____)
(spouse's name)
_____;
(not married)
4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____

_____

_____

_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____

_____

_____

_____

_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s) _____

_____

_____

_____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any

valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

_____

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8), ~~$1,500~~$1,000 allowed here; (b) if you claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of $2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value: _____

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

_____

_____

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds
_____		
_____		
_____		

20. That I wish to claim as exempt the following wedding and engagement rings not to exceed $4,000 in value. I understand that I am entitled to this exemption after deduction of the amount of any valid liens or purchase money security interests.

Item (or Class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
_____	_____	_____	_____
_____	_____	_____	_____

~~16.~~21. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value
_____		
_____		
_____		

This the _____ day of_____, ____

Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

Notary Public My Commission Expires:".

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of ~~his~~ the debtor's rights was served in accordance with G.S. 1C-1603(a)(4) or if ~~he~~the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina ~~Constitution.~~Constitution, except as provided in G.S. 1C-1601(a)(13) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and ~~personal property~~ other exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.~~judgment. Wages of the judgment debtor shall not be garnished unless specifically authorized by statute."

SECTION 6.(a) Article 16 of Chapter 1C of the General Statutes is amended by adding a new section to read:

"**§ 1C-1601.1. Automatic adjustment of value of certain exempt property; revision of form to reflect automatic adjustment.**

(a) Every three years on April 1, each dollar amount under subsection (a) of G.S. 1C-1601 shall be automatically adjusted and amended to a revised amount that:

(1) Reflects the change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the most recent three-year period ending immediately before January 1 that immediately precedes April 1 of the year in which the automatic adjustment occurs, and

(2) Is then rounded to the nearest twenty-five dollars ($25.00).

(b) Prior to April 1 of the year in which the automatic adjustment under subsection (a) of this section occurs, the Administrative Office of the Courts shall change the Statement by the Debtor form to be filed by the debtor pursuant to G.S. 1C-1603(c) to reflect the revised amounts."

SECTION 6.(b) The first automatic adjustment prescribed in G.S. 1C-1601.1 shall become effective on April 1, 2009.

SECTION 7. Except as otherwise provided, this act becomes effective January 1, 2006.

HOUSE BILL 1176:
Property Exempt From Enforcement Actions

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 10, 2005
Introduced by:	Reps. Weiss, Glazier, Goodwin, Harrison	**Summary by:**	Jennifer McGinnis
Version:	Amendments to Second Edition H1176-ARI-4 & H1176-ARI-6		Committee Counsel

SUMMARY: ***House Bill 1176 would increase the limit on property a judgment debtor can exempt from claims of a creditor, would add new exemptions, and would provide a mechanism for automatically changing those limits based on changes in the Consumer Price Index. Except as otherwise provided, the act would become effective January 1, 2006.***

AMENDMENTS ANALYSIS:

1. **Clarification of effective date:**
   - Change at page 13, line 29.
   - The amendment would clarify that the bill would apply to judgments filed on or after January 1, 2006.
2. **Clarification of automatic adjustment provision:**
   - Changes at page 1, line 9; page 3, lines 19 – 20; page 13, lines 10 –27.
   - The amendment would – (i) move the provision containing the automatic adjustment from a separate section to a new subdivision (a1) of G.S. 1C-1601, in order to immediately follow the subsection containing the listing of property exemption amounts for improved public notice of the periodic adjustments; (ii) clarify the calculation used for the periodic automatic adjustment; (iii) clarify that adjustments will not apply to judgments filed before the effective date of such adjustments; (iv) task the Office of State Budget and Management with calculating the adjustment; and (v) direct the Administrative Office of the Courts to publish the adjusted amounts in the North Carolina Register and direct the Reviser of Statutes to cause G.S. 1C-1601 and G.S. 1C-1603, reflecting the adjusted amounts, to be printed at the next publication of the General Statutes or any supplement to the statutes.

H1176e2-SMRI-ARI

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1176

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

H1176-ARI-6 [v.10]

Date _____,2005

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

Representative _____

moves to amend the bill on page 1, line 9, by inserting between the words "**exempt;**" and "**waiver;**" the phrase "**periodic automatic adjustment of exemption amounts;**"; and

on page 3, lines 19 and 20, by inserting between the lines:

"(a1) Adjustment of Exemption Amounts. –

(1) The exemption amounts listed under subsection (a) of this section are effective until March 31, 2009. As of April 1, 2009, and every three years thereafter on April 1, the exemption amounts shall be equal to the exemption amounts for the preceding three-year period adjusted by the percentage change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the most recent three-year period ending December 31 immediately preceding April 1 of the year in which the automatic adjustment occurs, rounded to the nearest twenty-five dollars ($25.00). The percentage change shall be determined using the December index figures from the first and third years of the three-year period. Adjustments made in accordance with this subsection shall not apply to judgments filed before the date such adjustments are effective.

and bankruptcy petitions

(2) No later than February 1 of the year in which the adjustment under this subsection occurs, the Administrative Office of the Courts shall notify the Office of State Budget and Management of the then current amount of each exemption under subsection (a) of this section. The Office of State Budget and Management shall calculate the adjustment in

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1176

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

H1176-ARI-6 [v.10]

accordance with this subsection and provide the adjusted amounts to the Administrative Office of the Courts no later than March 1.

(3) ~~No later than March 20 of the year in which the automatic adjustment under this section occurs, the Administrative Office of the Courts shall cause subsection (a) of this section and G.S. 1C-1603, reflecting the adjusted amounts, to be published in the next available North Carolina Register prior to that April~~ 1. The Reviser of Statutes shall cause subsection (a) of this section and G.S. 1C-1603, reflecting the adjusted amounts, to be printed at the next publication of the General Statutes or any supplement to the General Statutes immediately following an automatic adjustment under this subsection. No later than April 1, the Administrative Office of the Courts shall amend the Statement by the Debtor form to be filed by the debtor pursuant to G.S. 1C-1603(c) to include the adjusted amounts and the time period for which the amounts are effective."; and

and on page 13, lines 10 through 27, by deleting those lines and renumbering the remaining section accordingly.

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 2nd

H. B. No. 1176 DATE 5/10/05

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

COMMITTEE SUBSTITUTE ✓

(Rep.))
Sen.)

1 moves to amend the bill on page 13, line 29

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4 "January 1, 2006, and applies to judgments

5 and bankruptcy petitions filed on or after

6 that date."

7

8

9

10

11

12

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14

15

16

17

18

19

SIGNED

ADOPTED FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1176

Committee Substitute Favorable 5/2/05

PROPOSED COMMITTEE SUBSTITUTE H1176-PCS60440-RI-12

Short Title: Property Exempt From Enforcement Actions. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; periodic automatic adjustment of exemption amounts; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused

exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(5a) The debtor's aggregate interest, not to exceed four thousand dollars ($4,000) in value, in any wedding and engagement rings of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except

to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(13) The earnings of the debtor for the debtor's personal services, at any time within 60 days preceding an order under G.S. 1-362, an execution, or the filing of a petition for bankruptcy when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of the debtor or a family supported wholly or in part by the debtor's labor. Recent earnings exempt under this subdivision may only be waived pursuant to subdivision (2) of subsection (c) of this section.

(a1) Adjustment of Exemption Amounts. –

(1) The exemption amounts listed under subsection (a) of this section are effective until March 31, 2009. As of April 1, 2009, and every three years thereafter on April 1, the exemption amounts shall be equal to the exemption amounts for the preceding three-year period adjusted by the percentage change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the most recent three-year period ending December 31 immediately preceding April 1 of the year in which the automatic adjustment occurs, rounded to the nearest twenty-five dollars ($25.00). The percentage change shall be determined using the December index figures from the first and third years of the three-year period. Adjustments made in accordance with this subsection shall not apply to judgments and bankruptcy petitions filed before the date such adjustments are effective.

(2) No later than February 1 of the year in which the adjustment under this subsection occurs, the Administrative Office of the Courts shall notify the Office of State Budget and Management of the then current amount of each exemption under subsection (a) of this section. The Office of State Budget and Management shall calculate the adjustment in accordance with this subsection and provide the adjusted amounts to the Administrative Office of the Courts no later than March 1.

(3) The Revisor of Statutes shall cause subsection (a) of this section and G.S. 1C-1603, reflecting the adjusted amounts, to be printed at the next publication of the General Statutes or any supplement to the General Statutes immediately following an automatic adjustment under this subsection. No later than April 1, the Administrative Office of the Courts shall amend the Statement by the Debtor form to be filed by the debtor pursuant to G.S. 1C-1603(c) to include the adjusted amounts and the time period for which the amounts are effective.

(b) ~~Definition. "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~(4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6.

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve ~~him~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice ~~must~~ shall be substantially in the following form:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
_____ Judgment Creditor	))) NOTICE OF PETITION (OR MOTION) TO SET

vs.	)	OFF DEBTOR'S
_____	)	EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

(1) ~~His~~ The debtor's assets, including their location;

(2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;

(3) The property ~~which~~ that ~~he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

NORTH CAROLINA		IN THE GENERAL COURT
_____ COUNTY		OF JUSTICE DISTRICT
		COURT DIVISION
		CvD
Judgment Creditor	)	SCHEDULE OF DEBTOR'S
	)	PROPERTY
vs.	)	AND REQUEST TO
	)	SET ASIDE EXEMPT
Judgment Debtor	)	PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;

2. That I was born on _____;
(date of birth)

3. That I am (married to _____)
(spouse's name)

_____;
(not married)

4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____
_____
_____
_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____
_____
_____
_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s) _____

_____

_____

_____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and	Year	Name(s) of	Name(s) of	Estimated

Model of Motor Vehicle	Title Owner of Record	Lien Holder(s) of Record	Value of Debtor's Interest

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8), ~~$1,500~~$1,000 allowed here; (b) if you claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of $2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value: _____

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue

Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds

20. That I wish to claim as exempt the following wedding and engagement rings not to exceed $4,000 in value. I understand that I am entitled to this exemption after deduction of the amount of any valid liens or purchase money security interests.

Item (or Class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

~~16.~~21. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value

This the _____ day of_____, ____

Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

Notary Public My Commission Expires:".

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of ~~his~~ the debtor's rights was served in accordance with G.S. 1C-1603(a)(4) or if ~~he~~the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina ~~Constitution.~~Constitution, except as provided in G.S. 1C-1601(a)(13) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and ~~personal property~~ other exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.~~judgment. Wages of the judgment debtor shall not be garnished unless specifically authorized by statute."

SECTION 6. Except as otherwise provided, this act becomes effective January 1, 2006, and applies to judgments and bankruptcy petitions filed on or after that date.

House Pages

Name Of Committee: JD IV Date: 05/10/05

1. Name: Amber Henline
   County: Mitchell
   Sponsor: Rep. Phillip Frye
2. Name: Asia-La'Rae Walker
   County: Guilford
   Sponsor: Rep. Mary Price Harrison
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Liz Clarke, Intern from Mecklenburg

Sgt-At-Arms

1. Name: Jim Womack
2. Name: Brad Bamford } House Sgt@Arms
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

May 10, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Horner	NCAE
Leanne Winner	NCSBA
Trish Hyp	SBE / DPI
Gary Wilson	SBE
Margaret Westbrook	KCLH
Pam McAfee	NC Bar Assn
Rob Schofield	NC Justice Center
Mark Binker	N+R
Pamela Best	AOC
Megan Glazier	NA
Hilary Arthur	NCASA

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

May 10, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jon Myers	CMS

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, May 12, 2005

The House Committee on Judiciary IV met on Thursday, May 12, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bill Culpepper, Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced pages and sergeants-at-arms serving at the meeting.

Chairman Weiss asked Representative Daughtry if he would re-state the motion on HB 448, COMPLAINTS AGAINST SCHOOL BOARD MEMBERS, heard at the last meeting. The motion had been to adopt the bill as amended. Representative Daughtry said that he would re-state; he moved that the amendment be rolled into a committee substitute and that the committee substitute for HB 448 be given a favorable report, unfavorable to the original bill. The motion was adopted.

Representative Glazier moved to adopt a Proposed Committee Substitute for HB 1392 – FAILURE TO RETURN HIRED MOTOR VEHICLES for discussion. The motion was adopted and Representative Glazier spoke on the bill. Discussion followed with Mr. Sandy Sands, representing Enterprise Rent-A-Car, and Mr. Roger Bone, Carolina Independent Auto Dealers, answering questions from the members. After much discussion, the Chair displaced the bill until needed clarifications could be made.

Representative Hugh Holliman, Primary Sponsor, spoke on HB 76 – BAN SMOKING IN RESTAURANTS. Discussion followed. Representative Holliman passed out articles supporting smoke-free environments. (See attachments) Other speakers on the bill were Ms. Stallings, Cleveland County Health Director; Ms. Harris, Wake County Health Director; Ms. Bryan, President, American Lung Association of North Carolina; and Mr. Paul Stone, President, NC Restaurant Association. After further discussion, Chairman Weiss stated that the time had passed by which vote could be taken on the bill.

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 1392, Bill Analysis, Proposed Committee Substitute; HB 76, Bill Analysis, Hand-outs supporting smoke free environments (6); Listing of Pages, Visitor Registration Sheets.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, May 12, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 1392 - FAILURE TO RETURN HIRED MOTOR VEHICLES.
Representatives Glazier and Kiser

HB 76 - BAN SMOKING IN RESTAURANTS.
Representative Holliman

ADJOURNMENT

HOUSE BILL 1392

Short Title:	Failure to Return Hired Motor Vehicles.	(Public)
Sponsors:	Representatives Glazier and Kiser (Primary Sponsors).	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW AND PROCEDURE PERTAINING TO THE FAILURE TO RETURN A HIRED MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person failing to return it is guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,
   a. Within 10 days, and
   b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-163.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instruments, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made. Demand may be made in one of three ways:

a. By personal service.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease or rental agreement. Demand is effective upon hand delivery, mailing (even if the demand is returned as undeliverable), or delivery to the last know address.

(2) In a prosecution under G.S. 14-167, failed or refused to pay any amount due that is incurred after the lease, bailment, or rental agreement has expired, and after written demand is made. Amounts due include unpaid fees for the time period during which the vehicle was not returned and include the lesser of the cost of repairing or replacing the vehicle if it has been damaged.

(3) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167 shall immediately report the failure to the United States Department of Justice Stolen Vehicle System. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall immediately report the recovery to the United States Department of Justice Stolen Vehicle System. The officer shall also immediately

attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1392:
Failure to Return Hired Motor Vehicles

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 12, 2005
Introduced by:	Reps. Glazier, Kiser	**Summary by:**	Trina Griffin
Version:	PCS to First Edition H1392-CSSV-26		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1392 would create a new Class H felony offense for failure to return a hired motor vehicle valued in excess of $4,000. It provides that it shall be prima facie evidence of intent to commit the crime where (1) the person fails to return the vehicle at the end of the lease within 72 hours of written demand; (2) fails to pay amounts due at the end of the lease after demand; or (3) obtained lease of the vehicle through presentation of false identification. Upon receiving information that a hired motor vehicle has not been returned, the bill would also require law enforcement to report that information to the National Criminal Information Computer.***

CURRENT LAW:

Failure to return hired property. – G.S. 14-167 provides that a person who rents or hires any horse, mule, or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who willfully fails to return it to the possession of the person from whom the property has been rented or hired at the expiration of the rental or lease period is guilty of a Class 2 misdemeanor. The punishment for a Class 2 misdemeanor is 1-60 days, with a possible active sentence based on the defendant's prior record.

Hiring with intent to defraud. – G.S. 14-168 provides that any person who shall, with intent to cheat and defraud the owner thereof of the rental price therefor, hire or rent any horse or mule or any other like animal, or any buggy, wagon, truck, automobile or other like vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, or who shall obtain the possession of the same by false and fraudulent statements made with intent to deceive, which are calculated to deceive, and which do deceive, is guilty of a Class 2 misdemeanor.

Conversion by bailee, lessee, tenant, or attorney-in-fact. – G.S. 14-168.1 provides that every person entrusted with any property as bailee, lessee, tenant or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same, or the proceeds thereof, to his own use, or secretes it with a fraudulent intent to convert it to his own use, is guilty of a Class 1 misdemeanor. If, however, the value of the property converted or secreted, or the proceeds thereof, is in excess of four hundred dollars ($400.00), every person so converting or secreting it is guilty of a Class H felony. In all cases of doubt the jury shall, in the verdict, fix the value of the property converted or secreted.

BILL ANALYSIS:

Section 1 of the bill creates a new Class H felony offense for failure to return a hired or leased truck, automobile, or other motor vehicle valued in excess of $4,000. The minimum presumptive sentence for a Class H felony is 5 months and the maximum presumptive sentence is 20 months.

Section 2 of the bill makes a conforming change as the result of new language in Section 3 of the bill.

Section 3 of the bill creates a new statutory section setting forth what constitutes prima facie evidence of the intent to commit a crime under G.S. 14-167 (Failure to return hired property), G.S. 4-168 (Hiring with intent to defraud), and G.S. 14-168.1 (Conversion by bailee, lessee, tenant, or attorney-in-fact).

- Failure or refusal to return the vehicle after the lease, bailment, or rental agreement has expired within 72 hours after written demand is made.
- Failure or refusal to pay any amount due after the lease, bailment, or rental agreement has expired and after written demand is made. Amounts due would include unpaid fees and the lesser of the cost of repairing or replacing the vehicle if it has been damaged.
- Obtaining lease of a vehicle by presentation of false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

The written demand for return of the vehicle may be made to the person's last known address by either (1) personal service in accordance with Rule 4(j) of the Rules of Civil Procedure; (2) by certified mail, return receipt requested; (3) by deposit with a designated delivery service. The demand is effective either upon hand delivery or delivery by a designated delivery service, or three days after deposit in the mail.

Section 4 of the bill deleted the requirement that law enforcement report thefts and recoveries of motor vehicles to the DMV "immediately."

Section 5 of the bill requires law enforcement upon receiving a vehicle theft report or other reliable information that a hired motor vehicle has not be returned to report the failure to return to the National Criminal Information Computer. Law enforcement would also be required to report the recovery of those vehicles. Finally, law enforcement would also be required to attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the number is readily accessible.

EFFECTIVE DATE: This act is effective December 1, 2005, and applies to offenses committed on or after that date.

5/12/05 mtg

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1392
PROPOSED COMMITTEE SUBSTITUTE H1392-CSSV-26 [v.2]

5/11/2005 5:07:17 PM

Short Title: Failure to Return Hired Motor Vehicles. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A FELONY OFFENSE FOR FAILURE TO RETURN A HIRED MOTOR VEHICLE VALUED IN EXCESS OF FOUR THOUSAND DOLLARS ($4,000).

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person who rented or hired it and failed to return it shall be guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,
   a. Within 10 days, and
   b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the

last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-168.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle; demand for return or payment.**

(a) Prima facie evidence. – It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instrument, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made in accordance with subsection (b) of this section.

(2) Failed or refused to pay any amount due that is incurred after the lease, bailment, or rental agreement has expired, and after written demand is made in accordance with subsection (b) of this section. Amounts due include unpaid fees for the time period during which the vehicle was not returned, and include the lesser of the cost of repairing or replacing the vehicle if it has been damaged.

(3) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

(b) Method of demand; when effective. –

(1) Demand for return of a leased or rented truck, automobile, or other motor vehicle may be made in one of three ways:

a. By personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease, bailment, or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease, bailment, or rental agreement.

(2) Demand is effective upon hand delivery to the last known address, three days after deposit by mail (even if the demand is returned as undeliverable), or upon delivery by a designated delivery service to the last known address."

SECTION 4. G.S. 20-102 reads as rewritten:

"**§ 20-102. Report of stolen and recovered motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall ~~immediately~~ report such theft to the Division. Any said officer upon receiving information that any vehicle, which he has previously reported as stolen, has been recovered, shall ~~immediately~~ report the fact of such recovery to the Division."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167 shall report the failure to the National Criminal Information Computer. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Criminal Information Computer. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 6. This act is effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 76

Short Title: Ban Smoking in Restaurants. (Public)

Sponsors: Representatives Holliman; Alexander, B. Allen, Luebke, and Weiss.

Referred to: Judiciary IV.

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING SMOKING IN PUBLIC PLACES AND TO PROHIBIT SMOKING IN RESTAURANTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-596(4) is repealed.

SECTION 2. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 62.

"Smoking in Public Restaurants.

"**§ 14-462. Definitions.**

The following definitions shall apply to this Article:

(1) Restaurant. – An eating establishment substantially engaged in the business of preparing and serving meals and regularly and customarily selling food to be eaten on the premises, including but not limited to, coffee shops, cafeterias, sandwich stands, and any building, structure, or area where food is available for eating on the premises in consideration of payment. The term 'restaurant' shall also include a bar or lounge area attached to a restaurant, but shall not include an outdoor or partially enclosed seating area without a ceiling.

(2) Smoke or smoking. – The use or possession of a lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.

"**§ 14-463. Smoking in public restaurants prohibited; notice.**

(a) Notwithstanding any other provision of law, no person shall smoke in any restaurant generally open and accessible to the public. 'No Smoking' signs or the international 'No Smoking' symbol, which consists of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it, shall be conspicuously posted and properly maintained in each restaurant and at each entrance to a restaurant.

(b) Any person in charge of a restaurant open and accessible to the public or a designated agent or employee of the restaurant, who observes a person smoking in

apparent violation of this section, shall ask the person to extinguish all lighted tobacco products. If the person persists in apparent violation of this section, the person in charge of the restaurant or the designated agent or employee of the restaurant shall ask the person to leave the premises.

"**§ 14-464. Violations; penalties.**

Any person who refuses to either extinguish all lighted tobacco products or leave the premises of a restaurant when asked to do so pursuant to G.S. 14-463(b) is responsible for an infraction. For violations occurring prior to January 1, 2007 the person shall be issued a warning. A person committing a violation on or after January 1, 2007 is subject to a fine not to exceed fifty dollars ($50.00). Any violation of this Article may be reported to a law enforcement officer.

"**§ 14-465. Exceptions.**

This Article shall not apply to the following:

(1) Any building owned, rented, leased, or otherwise operated by a social, fraternal, or religious organization when used solely by the organization members or their guests or families.

(2) Any facility rented or leased for private functions from which the general public is excluded.

(3) Private clubs."

SECTION 3. This act becomes effective January 1, 2006, and applies to acts committed on or after that date.

HOUSE BILL 76:
Ban Smoking in Restaurants

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 11, 2005
Introduced by:	Rep. Holliman	**Summary by:**	Steven Rose Committee Counsel
Version:	First Edition		

SUMMARY: HB 76 prohibits smoking in restaurants and requires appropriate signage

BILL ANALYSIS: HB 76 prohibits smoking in restaurants that are open and accessible to the public. A restaurant is defined as an eating establishment preparing and serving meals and regularly selling food to be eaten on the premises. It includes a wide variety of establishments including coffee shops, cafeterias, sandwich stands, and any structure or area where food is available for eating in the premises for payment. It also includes bars and lounge areas attached to restaurants, but does not include an outdoor or partially enclosed seating area without a ceiling. Smoking includes use or possession of lighted tobacco products.

Signs prohibiting smoking must be conspicuously displayed. The person in charge, or a designee, must ask any person observed smoking to extinguish the product. If the person does not, they must be asked to leave.

Refusal to extinguish the tobacco product or leave the restaurant is an infraction. Prior to January 1, 2007 a warning is issued. Afterward, the violator may be fined up to $50.

Premises operated by private organizations for members and their guest or families are exempt, as are premises used for private functions and private clubs.

The act also repeals the definition of a restaurant found in Article 64 of Chapter 143. Article 64 regulates smoking in State controlled buildings and limits the ordinances local governments may pass to ban smoking. Although it contains a definition of a restaurant, the term is not used anywhere in the article.

EFFECTIVE DATE: The act is effective January 1, 2006 and applies to acts committed on or after that date.

H0076e1-SMRL

CAMPAIGN for TOBACCO-FREE Kids®

"... ***our goal is to reduce the business at hospitals and funeral homes by 30 percent.***"
-- Representative Michael P. Lawlor, Co-Chairman, Judiciary Committee, Connecticut State House of Representatives[1]

SMOKE-FREE LAWS DO NOT HARM BUSINESS AT RESTAURANTS AND BARS

In recent years a groundswell of support for smoke-free restaurant and bar laws has developed from states and localities across the country. As of April 2005, more than one-third of the U.S. population, or more than 100 million people, are now covered by strong smoke-free laws – a figure that has more than doubled in size in roughly two years.[2] Strong smoke-free restaurant and bar laws are important because:

- There is overwhelming scientific evidence that secondhand tobacco smoke is a direct cause of lung cancer (causing an estimated 3,000 nonsmokers to die each year),[3] heart disease (35,000 deaths each year),[4] and lung and bronchial infections (affecting a quarter million children every year).[5]

- Smoke-free laws help protect restaurant and bar employees and patrons from the harms of secondhand smoke.[6]

- Smoke-free laws help the seven out of every ten smokers who want to quit smoking by providing them with public environments free from any pressure or temptation to smoke.[7]

Accompanying the growth in smoke-free laws nationwide has been a parallel increase in false allegations from the cigarette companies and their allies that smoke-free laws will hurt local economies and businesses.[8] In fact, numerous careful scientific and economic analyses show that smoke-free laws do not hurt restaurant and bar patronage, employment, sales, or profits.[9] At worst, the laws have no effect at all, and they sometimes even produce slightly positive trends. For example:

- A study in the journal *Tobacco Control* (in 2003) offered a comprehensive review of all available studies on the economic impact of smoke-free workplace laws and concluded that: "All of the best designed studies report no impact or a positive impact of smoke-free restaurant and bar laws on sales or employment. Policymakers can act to protect workers and patrons from the toxins in secondhand smoke confident in rejecting industry claims that there will be an adverse economic impact."[10]

- A study conducted by researchers at the Harvard School of School of Public Health of the Commonwealth of Massachusetts' comprehensive statewide smoke-free law that took effect July 5, 2004 found that, "Analyses of economic data prior to and following implementation of the law demonstrated that the Massachusetts state-wide law did not negatively affect statewide meals and alcoholic beverage excise tax collections. Furthermore, the number of employees in food services and drinking places and accommodation establishments, and keno sales were not affected by the law."[11]

- A study conducted by researchers at the University of Kentucky's College of Nursing and the Gatton College of Business and Economics of the Lexington-Fayette County, Kentucky comprehensive smoke-free law that took effect April 27, 2004 found that,

  > "In general, selected key business indicators in Lexington restaurants, bars, and hotels have not been affected by the smoke-free law. When taking factors into account such as population size, unemployment, and seasonal variation, there was a slight increase in restaurant employment; bar employment remained stable and hotel/motel employment declined in the 10 months after the smoke-free law took effect. There was no effect of the smoke-free law on payroll withholding taxes (workers' earnings) in restaurants, bars, or hotels/motels in the 10 months after the law went into effect, after taking seasonal variation into account. The smoke-free law was not related

to business openings or closures in alcohol-serving establishments or at non-alcohol serving establishments."[12]

- A study conducted by research economists at the University of Florida's Bureau of Economic and Business Research found that the state's voter-approved smoke-free law, which took effect July 1, 2003, has not hurt sales or employment in the hotel, restaurant and tourism industries (the Florida law exempts stand-alone bars). In addition to analyzing total sales, the study also examined restaurant revenue as a percentage of total retail revenue in order to account for underlying economic conditions in the state. The proportion of retail sales by Florida's restaurants, lunchrooms, and catering services increased by 7.37% after the smoke-free law went into effect. [13]

- On March 30, 2003, New York City implemented its comprehensive smoke-free workplace law prohibiting smoking in all of the city's restaurants and bars. A March 2004 report issued by the New York City Department of Finance, Department of Health and Mental Hygiene, Department of Small Business Services, and Economic Development Corporation noted, "One year later, the data are clear. . . Since the law went into effect, business receipts for restaurants and bars have increased, employment has risen, virtually all establishments are complying with the law, and the number of new liquor licenses issued has increased—all signs that New York City bars and restaurants are prospering."[14] The report noted that business tax receipts for restaurants and bars increased 8.7 percent from April 1, 2003, to January 31, 2004 compared to the same period in 2002-2003. Employment in New York City restaurants and bars increased by 10,600 jobs (about 2,800 seasonally adjusted jobs) from the implementation of the smoke-free law in March 2003 to December 2003.[15] The 2004 Zagat New York City Restaurant Survey provides additional evidence that New York City's smoke-free law is not hurting business. The survey of nearly 30,000 New York restaurant-goers found that 23 percent of respondents said they are eating out more often because of the city's smoke-free workplace law, while only four percent said they are eating out less. Zagat's press release concludes, "The city's recent smoking ban, far from curbing restaurant traffic, has given it a major lift."[16]

- In Delaware, business remains steady one year after the state's Clean Indoor Air Act went into effect in November 2002. Data from the Delaware Alcohol Beverage Control Commission show that the number of restaurant, tavern and taproom licenses increased in the year since the law took effect. Data from the Delaware Department of Labor show that employment in the state's food service and drinking establishments also increased in the year since the smoke-free law went into effect. [17]

- A study released by the U.S. Centers for Disease Control and Prevention (CDC) found that a comprehensive smoke-free policy in El Paso, TX did not affect restaurant and bar revenue in the year after it took effect in January 2002.[18] The CDC and the Texas Department of Health analysis found no statistically significant changes in overall restaurant and bar revenues, bar liquor sales, or restaurant and bar revenue as a percentage of total revenue. The latter finding refutes arguments often made by opponents of smoke-free laws that, even if bar and restaurant revenues grow after such laws take effect, they do not grow as fast as the rest of the economy.

- In California, taxable sales receipts for bars and restaurants have increased every year since 1997 (the year before the state's smoke-free bar law took effect) through 2002 (the most current year full data is available).[19] In addition, total employment at bars and restaurants has also increased every year since 1997.[20] While bars have seen a decrease in total employment since 1990 (seven years before the smoke-free laws implementation), this trend in bar employment has not been affected by the smoke-free bar law.

- Studies of sales tax data from 81 localities in six states have consistently demonstrated that ordinances restricting smoking in restaurants had no effect on restaurant revenues.[21]

- In New York City, a partial smoke-free workplace law went into effect in 1995, but from 1993-1997 restaurant employment growth in the city was more than three times that of the rest of the state (17.6% versus 4.6%).[22] In addition, the New York City smoke-free law has not had any significant impact on dining out patterns among New York City diners.[23]

- Studies of this earlier New York City smoke-free workplace law have also shown that it did not effect the wide variation in restaurant and hotel industry indicators caused by seasonal changes and other factors. Peer-reviewed articles have concluded that the smoke-free law did not harm the city's restaurant industry; and there was no evidence that the hotel industry had been adversely affected.[24]

- Studies of local smoke-free policies in Massachusetts have shown no substantial impact on aggregate restaurant sales. In addition, the adoption of local smoke-free restaurant policies did not cause any statistically significant change in town taxable meal revenue.[25]

- Studies of smoke-free laws in California and Colorado have found that smoke-free ordinances do not affect restaurant revenues (and the same holds true for smoke-free bar ordinances).[26]

Key Restaurant and Business Leaders Support Smoke-Free Laws

Members of the business community, including restaurant and bar owners, are becoming increasingly supportive of smoke-free laws, recognizing that these laws can have a positive impact on public health and the health of their business.[27]

- Michael O'Neal, former president of the New York State Restaurant Association: "I feel strongly that it is pro-business and pro-health to eliminate smoking in all workplaces, including restaurants. Smoke-free workplace legislation does not hurt business . . . Smoking prohibitions in California, Utah, Vermont, Maryland and Maine as well as in hundreds of cities all over the country prove that smoke-free-workplace legislation is good for all businesses, including the restaurant business. That shouldn't be a surprise. Even smokers prefer to breathe clean air."[28]

- Support for New York's law has grown even among bar and restaurant owners. James McBratney, President of the Staten Island Restaurant and Tavern Association, was quoted in the Feb. 6, 2005, issue of The New York Times saying "I have to admit, I've seen no falloff in business in either establishment [restaurant or bar]." According to The Times, "He went on to describe what he once considered unimaginable: Customers actually seem to like it, and so does he." [29]

- David E. Garth, President and CEO of the San Luis Obispo Chamber of Commerce in California: "I must admit that, at the time the [San Luis Obispo smoke-free bar and restaurant] ordinance was presented, we were extremely wary of it. We feared that the ban on smoking would cost the community revenue, jobs, tax dollars, tourists and tourist-generated income. We ended up coming out in support of the ordinance, seeing it as a leap of faith that wouldn't hurt businesses. Suffice it to say, our initial fears were unfounded and today, I'm pleased to report that the effects have been extremely positive."[30]

- A 2002 survey of California bar owners, managers, assistant managers and bartenders found overwhelming support for the state's smoke-free bar law, with more than eight in ten bar managers and employees (83 percent) saying they think the smoke-free workplace law protects their health and the health of other bar employees, and 77 percent of bar managers and employees saying that complying with the law has been "very" or "fairly" easy.[31]

The Campaign for Tobacco-Free Kids, April 18, 2005 / Matt Barry

Related Campaign Factsheets on secondhand smoke and smoke-free laws are available at:
http://tobaccofreekids.org/research/factsheets/index.php?CategoryID=19.

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Health Concerns

-Secondhand smoke- a combination of side stream smoke (the burning end of a cigarette, pipe, cigar, etc) and mainstream smoke (what one exhales).

-Secondhand smoke causes the deaths of **35,00-62,000 Americans** from heart disease and lung cancer.

-Thirty minutes of exposure to secondhand smoke can double your risk of heart attack.

-The National Environmental Health Information Service defined secondhand smoke as a known human carcinogen; which means that there is **no acceptable level of exposure.**

-There are over 4,000 chemicals and over 60 known carcinogens such as formaldehyde in second hand smoke, which are known to cause:

- Lung cancer
- Nasal cancer
- Sinus cancer

Studies suggest that it could cause

- Cervix cancer
- Breast cancer
- Bladder cancer

-Secondhand smoke has also been known to cause:

- Chronic coughing
- Chest discomfort
- Lowered lung function
- Severe lower respiratory tract infections in children
- More severe asthma and increased chance of development of asthma
- Eye and nose irritation
- Severe and chronic heart disease
- Middle ear infections in children
- Sudden Infant Death Syndrome (SIDS)
- Low birth weight

Exposure Damage

5 minute exposure	=	smoking a cigarette
20 minute exposure	=	smoking a pack a day
30 minute exposure	=	stiffened clogged arteries
2 hour exposure	=	greater risk of irregular heartbeat

These health effects can take as long as 48 hours to reverse themselves

Overview of Economic Impact of Smoke-Free Laws

NYC:

- -In 2003 employment in restaurants increased by 0.9%; compared to 0.2% in 2002
- -Zogby poll-16% of New Yorkers said they are more likely to go out now, only 11% said that they were less likely.
- -Another survey of 30,000 New Yorkers found that 23% of respondents are more likely to eat out, and 4% said that they were eating out less.
- **-Bars and restaurants paid 12% more in tax revenues in the first 6 months after the law came into effect**

Florida

- A study by the Bureau of Economic and Business Research at the University of Florida found that the **statewide smoke-free law has not hurt restaurant and tourism sales or employment.** (See Economic Impact of Florida's Smoke-free Workplace Law packet)

Maryland

- Six months after Montgomery County implemented a non-smoking ordinance that applies to restaurants and bars the restaurant industry saw a **7% increase in tax revenues.** Alcohol sales increased by 4.5% in the same period

Delaware

- According to the National Restaurant Association, business in Delaware increased in 2003, 1 year after a smoke-free law went into effect in November of 2002. **Employment and restaurant and tavern licenses also increased**

California

- Tax revenues and employment has increased every year since 1997 (smoke-free law went into effect in 1998)
- From 1997 to 2001 tax revenues increased by 30.4%; compared to the 18.9% increase from 1993 to 1997

Massachusetts

- **Studies have shown no substantial impact on restaurant sales**

Other

- Sales tax studies from 81 localities in 6 states have shown that nonsmoking ordinances have no effect on restaurant revenues
- The journal of Tobacco Control reviewed the credibility of smoke-free economic analyses and found that all studies reporting a negative economic impact were not independent and objective from the tobacco industry.
- The government and employers also stand to benefit from increased productivity and better health of employees. Studies show that good indoor air quality can

raise productivity by 3% and better employee health can reduce work absences and lower insurance cost.

- **A study in the North Carolina Medical Journal found that counties with smoking regulations had no negative impact on restaurant sales.** (see Environmental Tobacco Smoke Regulations Have not hurt Restaurant Sales in North Carolina: p2-3 have the results of the study with key points highlighted for your convenience)

Attachments

- "Smoke Free USA"-contains a list of all states with clean air laws for the state as a whole, counties, and individual cities. (**Update**-after the release of this information, Montana passed a smoking ban in enclosed public places in April of 2005)
- "Smoke Free North Carolina"- contains a list of Restaurants in North Carolina that already ban smoking.
- "The Economic Impact of Florida's Smoke-free Workplace Law"
- "Environmental Tobacco Smoke Regulations Have Not Hurt Restaurant Sales in North Carolina"

world

smoke free usa

General notes: Laws and customs differ from state to state. Most of the action is at the local level. This page reflects what SFW knows about laws and does **not** mean that the laws are followed or not being challenged in court. Gentle corrections are welcome - following legislation is not the main purpose of this site. Indeed, the site was started because a smoking ban was not at first respected. If you're looking for really up-to-date *legal* information, try www.tobacco.org

Workplace: Smoking is generally, but not always banned in many workplaces, hospitals, government buildings, museums, schools and theatres.

Travel: Banned in train/bus stations, but enforcement is uneven. Banned on domestic airplanes, but many airports have smoking sections, and airport bars tend to be smoky. Many hotels offer, but do not guarantee,'nonsmoking' rooms. Sometimes this only means you are free not to smoke in yours - but the guest before you might have, and smoke might come in from next door.

Dining: Smoking in restaurants is banned in a number of cities and counties but is still common. California and Massachusetts are possibly the friendliest to nonsmokers - restaurants, bars, music clubs and bowling alleys are almost entirely smokefree.

Chain restaurants often ban smoking, but this may depend on whether a restaurant is owned by the corporation or franchised to a local manager. "Pub-restaurants" often ban smoking, especially places which brew their own beer (come to America and spend your euros in our pubs :) especially try the porters from microbreweries, very nice).

Nightlife: Smoking in bars and music venues is common. The tobacco industry spends $$$$$$ to make smoking look hip. This makes it hard to find smokefree entertainment in many states. Exceptions: venues for classical music & (often) 'acoustic' music (everything from bluegrass to swing) tend to be non-smoking.

Business: You will make a better impression in either social or business situations if you ask before lighting up. Even if it's perfectly OK, people will appreciate your politeness.

ALASKA	2002: **Anchorage** banned smoking in

	most workplaces workplaces (restaurants, bowling alleys and pool halls, but not bars).
ALABAMA	
ARIZONA	**Tempe** and **Guadalupe** banned smoking in most public places in May 2002. Includes restaurants, bars, bowling alleys. **Tucson** and **Mesa** ban smoking in most restaurants.
ARKANSAS	Feb. 2004: Fayetteville banned smoking in restaurants and bars.
CALIFORNIA	Smoking banned for some years in most public venues incl. bars, bowling alleys, clubs
COLORADO	**Boulder** requires eating **and** drinking establishments to have a separately ventilated section for smokers.
CONNECTICUT	In 2003 smoking was banned in the workplace, including restaurants and bars, but exempting casinos and private clubs. Legal challenges are in process.
DELAWARE	Smoking ban 11/27/2002 included all public buildings and workplaces including bars, restaurants, and casinos.
FLORIDA	July 2003: smoking banned in the workplace (including restaurants). Stand-alone bars and smoking rooms in hotels are exempt.
GEORGIA	March 2005: Gwinnett County has banned smoking in restaurants and bars.
HAWAII	July 2002: City and county of **Honolulu** (island of Oahu): Indoor smoking in restaurants banned, & bar areas of restaurants, unless separately ventilated. Starting July 2003 even those areas must be nonsmoking. Bars and nightclubs not covered. As of

	January 2003 smoking was banned in all restaurants on Maui.
IDAHO	July 2004: Smoking is banned in restaurants, retail stores, sports venues and child care centers, schools and hospitals.
ILLINOIS	
INDIANA	**Fort Wayne** bans smoking in restaurants. August 1, 2003: **Bloomington**: bans smoking in restaurants and public places. Starting 2005 it includes bars and private clubs.
IOWA	
KANSAS	July 2004: **Lawrence** bans smoking in the workplace (including restaurants).
KENTUCKY	
LOUISIANA	
MAINE	Smoking banned in restaurants; bars supposed to be smokefree starting Jan. 2004.
MARYLAND	Montgomery County restaurants allow smoking only at the bar; so if a restaurant has no bar, there is supposed to be no smoking. Shopping malls tend to be smokefree.
MASSACHUSETTS	July 2004: Statewide ban on smoking in the workplace, including restaurants and bars; private clubs and cigar bars exempted. This comes after many local communities banned smoking, such as **Cambridge** and **Cape Cod**
MICHIGAN	
MINNESOTA	Duluth, Moose Lake, Cloquet and Olmsted County have all banned smoking in restaurants. March 2005: Smoking ban went into

	effect for bars, restaurants and bowling alleys in Hennepin county and cities of Minneapolis, Bloomington and Golden Valley. A less restrictive ban also went into effect for Ramsey County bars and restaurants (which contains St. Paul, MN) that generate less than 50% of their revenue from the sale of alcohol.
MISSOURI	July 2004: City of Arnold passed a law smoking in bars and restaurants with attached bars. It goes into effect November 1, 2004.
MISSISSIPPI	
MONTANA	June 2002: **Helena** banned smoking in all public venues, including bars and casinos. **Missoula** has a similar ordinance but exempts bars and casinos. **Bozeman** bans smoking in restaurants and bars where there is no separation, Nov. 2002.
NEBRASKA	The capital city, Lincoln, banned smoking in the workplace (including bars and restaurants) Jan 1, 2005.
NEVADA	
NEW HAMPSHIRE	
NEW JERSEY	
NEW MEXICO	**Albuquerque** bans smoking in restaurants and bars which are not separate from restaurants.
NEW YORK	The state bans smoking in most businesses, including restaurants, bars, bowling alleys, dance clubs and pool halls. It is backed by fines. Indian casinos are exempted.
NORTH CAROLINA	

NORTH DAKOTA	
OHIO	The City of Columbus banned smoking in restaurants and bars as of Feb. 2005.
OKLAHOMA	July 2002 law regulates restaurants serving more than 50 customers as follows: they can declare themselves entirely smoking, entirely smoke-free or effectively smoke-free. If effectively smoke-free, they must provide separately ventilated smoking rooms. Same for indoor workplaces with 15 or more employees, bars, pools halls, bowling, adult day care, malls, and certain medical facilities. Hotel lobbies and youth camps are to be smokefree.
OREGON	**Corvallis** bans smoking in restaurants and bars. **Eugene** has a workplace smoking ban which includes bars, restaurants and all types of venues.
PENNSYLVANIA	
RHODE ISLAND	Smoking banned in the workplace, including restaurants and bars, clubs and bowling alleys.
SOUTH CAROLINA	
SOUTH DAKOTA	July 2002: smoking ban in most workplaces - bars & casinos exempted
TENNESSEE	
TEXAS	A number of cities (**Odessa, Austin, El Paso, Lubbock, New Braunfels** among others) ban smoking in restaurants or even all public places, some more strongly than others. As of March 1, 2003, Dallas banned smoking in restaurants, hotels, bowling alleys, and city-owned facilities. Bars are exempt and hotels can offer smoking rooms.
UTAH	Smoking banned in most public places

VERMONT	Vermont has banned smoking in restaurants for some years but not bars. Starting May 2004, the city of Burlington will ban smoking in bars.
VIRGINIA	
WASHINGTON DC	Smoking banned in government buildings - except in Congress.
WASHINGTON STATE	
WEST VIRGINIA	Cabell County banned smoking in restaurants, workplaces and even bingo halls. Appealed to state Supreme Court May 2002
WISCONSIN	
WYOMING	

top

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world
usa

smoke free north carolina

A listing of local smokefree dining and entertainment venues.

asheville | blowing rock | boone | carrboro | cary | chapel hill | charlotte | chimney rock | cornelius | durham | fayetteville | greensboro | greenville | hot springs | huntersville | lumberton | marshall | nags head | raleigh | williamston | winston salem | other resources

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ASHEVILLE

Boston Pizza
501 Merrimon Avenue (828) 252-3474
Pizzeria, popular college hangout. Drinks available.
Mon-Fri 11am-10pm / Sat-Sun till 11pm

Cafe Terra
Earth Fare, Westgate Shopping Center (828) 253-7656
Natural food restaurant in a grocery. Vegan friendly. Modest prices and a wide range of dishes.

City Bakery
88 Charlotte Street (828) 254-4289
All kinds of baked goods, made from organic flour. Organic coffees. Modest prices.
Weekdays 7:30am-6pm / Sat 8am-3pm

Dragon Oriental Restaurant
1500 Tunnel Road (828) 299-8186
Asian fusion. Drinks available, moderate prices.
Mon-Fri 11:30am-2pm & 5pm-10pm (depends on crowd) / Sat dinner only

French Window Creperie
13 Broadway Avenue (828) 255-1990
What it sounds like. Small place serving yummy crepes, prepared by people who know how.
Mon-Th 1:30pm-5:30pm / Fri-Sat 11:30am-8pm

The Grey Eagle Tavern and Music Hall
185 Clingman Avenue (828) 232-5800
Live music AND a pub! Well known venue for live music: bluegrass, rockabilly, jazz and blues. Featuring famous acts such as Doc Watson, Robert Earl Keen, Southern Culture on the Skids, Leo Kottke, Arlo Guthrie, as well as local singer-songwriters, and dancing. "Serving a great selection of beer and wine", a nonsmoking music venue for all ages, with a patio.
Mon-Sat from 4pm onward.

Mandarin Chinese Restaurant
801 Fairview Road (828) 299-0216
Chinese restaurant with buffet. Drinks available. Modest prices.

Max & Rosie's Cafe
52 North Lexington Avenue (828) 254-5342
Cheerful downtown vegetarian restaurant, very modest prices. Hot entrees, sandwiches, salads. Juice bar, espresso. No alcohol.
Mon-Sat 11am-5pm / Sun noon-5pm

Mother India Restaurant
1996 Hendersonville Road (828) 687-7082
Indian and Pakistani cuisine, which is, by definition, comfort food :) .
Has a no-smoking *room*. Drinks available. Lunch buffet.

New York Bagel
333 Merrimon Avenue
Nice selection of bagels and sandwiches, fresh challah on Fridays.
Smoking allowed at outside tables.
Tu-Sat 7am-2pm

Panda Express
3 South Tunnel Road (828) 299-9205
Chinese restaurant, moderate-and-upwards prices.
Mon-Sat 10am-9pm / Sun 1pm-6pm

Royal Garden
156 South Tunnel Road (828) 298-9788
In the mall. Moderately priced Chinese restaurant, lunch and dinner buffet, drinks available. Friendly service.
Open 7 days.

Salsa
6 Patton Avenue (828) 252-9805
Mexican restaurant, vegetarian friendly, fresh ingredients. Drinks available. Moderate prices. Long waiting list on a recent Saturday night.
Mon-Sat

Tomoís
2 Regent Park Boulevard (828) 252-7177
Popular Japanese restaurant and sushi bar. Drinks available.
Lunch Tu-Fri / Dinner Tu-Sun

Wanpen Thai
2292 Hendersonville Road (828) 684-2777
Thai restaurant, lunch buffet. Drinks available. Has a no-smoking *room*.
Open 7 days, Saturday dinner only.

top

BLOWING ROCK

The Riverwood
7179 Valley Blvd, Highway 321 (828) 295-4162
Small, elegant but casual restaurant in an old restored home.
Dinners Mon-Fri from 6pm / Sat from 5:30pm

BOONE

Country Retreat Billiards
9021 NC Highway 105 South (704) 963-6260
Billiard hall and restaurant with exhibition play.

Pepper's Restaurant
240 Shadowline Drive (828) 262-1250
Casual dining serving lunch and dinner 7 days a week. Prices moderate.
since 1975
Totally smokefree

CARRBORO

Cat's Cradle
300 East Main Street (919) 967-9053
Popular large dance club (rock) - live music.

top

CARY

Dec. 2004 - A smoker says this list isn't nearly long enough, that most restaurants in Cary are smokefree (and hence will not get his business).

35
1135 Kildaire Farm Road (919) 467-4262
Yup that's the name of this smokefree Chinese restaurant.

Ben's Jamaican Restaurant
8306 Chapel Hill Road (919) 380-1818
Authentic Jamaican cuisine such as jerk chicken.
Mon-Th 11am-10pm / Fri-Sat 11am-11pm / Sun 3pm-9pm

D'Nardy's Restaurant & Catering

909 Aviation Parkway #100 (Southport Business Park) (919) 481-3381
Mon-Fri 7am-10am / 11am-3pm

Gypsy's Shiny Diner
Smoke-free since it opened in 1997.

Kenny Rogers Restaurant
1305 Kildaire Farm Road (919)380-8965
You got to know when to hold 'em, know when to fold 'em...

Manhattan Bagel
970 High House Road
A cup of coffee and a bagel in the morning and you're good to go! I think I can, I think I can... Two locations in Cary.
Mon-Fri 6am-5pm / Sat 7am-4pm / Sun 7am-2pm (bakers get up **way** early)

Manhattan Bagel
2050 Kildaire Farm Road
Two cups of coffee and a bagel in the morning and you're good to go! I know I can, I know I can...
Mon-Fri 6am-5pm / Sat 7am-4pm / Sun 7am-2pm

Michael's Pizza & Pasta
175 High House Road (Cary Plaza Shopping Center) (919) 467-0816

Pleasant, moderately priced Italian restaurant. Excellent service.
Mon-Sat 11:30am-10pm / Sun 4pm-9pm

New York Pizza
1831 North Harrison Avenue (919) 677-8484
Mon-Sat 11am-9pm

Shanghai Garden Chinese Restaurant
1861 North Harrison Avenue (919) 677-1166
Sun-Thurs 4:30pm-8:45pm

Six String Cafe
107 Edinburgh South (919) 469-3667
Live acoustic music in a smokefree bar. (There's a smoking patio)

top

CHAPEL HILL

Smoking is banned in Chapel Hill restaurants, unless there is "separate ventilation". Comments on the effectiveness of this are welcome.

Lucy's
114 Henderson Street (919) 933-2260
Restaurant and bar. The food is presented well but is ordinary with very little for vegetarians. Inside is dark, the music has too much bass to it. But it's one of the few bars that is smoke-free. The prices are normal for CH. Students and young people hang-out.
11am-1am

Panera Bread Company
213 West Franklin Street (919) 929-9189
Very casual dress. Bakery, sandwiches, salads, coffee. Has tables, couches, outside tables. Trendy look. Good looking baked goods.
thanks SpamInACan! :)

top

CHARLOTTE

Emperor Chinese Restaurant
337 South Kings Drive (704) 333-2688
Inexpensive midtown lunch and dinner. Good cooking and low-cal versions of dishes available.

Koko Chinese Restaurant
1742 Lombardy Circle (704) 338-6869
Taiwanese cuisine, excellent cooking, casual and moderately priced.

Lang Van Vietnamese Restaurant
3019 Shamrock Drive (704) 531-9525

Planet Grill
1531 East Boulevard (704) 372-1818
Custom grilled steak, chicken, seafood and vegetables. Not quite Benihana - the chef doesn't perform at your table, but popular and family-friendly.

Moe's Southwestern Grill
1500 East Boulevard (704) 377-6344
Good tex-mex restaurant, moderate prices, casual, family-friendly.
Daily 11am-10pm

Talley's Cafe Verde
1408 East Boulevard (704) 334-9200
Vegetarian cafe and deli. Also some vegan dishes. Highly rated but not high priced.

CHIMNEY ROCK

Esmeralda Inn
Box 57, Highway 74A (828) 625-9105
Off Rt 64 between Asheville & Rutherfordton Gourmet restaurant and inn in the Blue Ridge mountains. Also catered events.
Tu-Sat 11:30am-2:30pm & 5:30pm-8:30pm / Sunday 11am-2pm
mid-April to mid-November

Cajun Pig
496 Main Street (828) 625-0701
Timothy D. Turner, Owner
Serving award winning BBQ Pork, Ribs, Mesquite Smoked Beef Brisket & Chicken, Great Cajun Delights - Red Beans & Rice, Gumbo & Jambalaya, Lots of Veggies & Salads
Open Thursday - Sunday 11am-8pm
Live Music Friday & Saturday Night and Sunday Afternoons
COME ON DOWN FOR SOME FOOT STOMPIN' FAMILY FUN!

CORNELIUS

Irish Cue Billiards
3866 Peach Street (704) 892-6904

Thai Grill
19741 South Main Street (704) 655-8880
Lunch and dinner. Casual and inexpensive.

top

DURHAM

Boston Market
3029 Auto Drive (919) 490-8677
A chain restaurant serving hot entrees and vegetables. Clean and family-friendly.

Blue Corn Cafe
716 - 9th Street (919) 286-9600
Mexican food, some unique. Price range is low to moderate. No dress code. Alcoholic drinks. Art on the wall for sale.
Thanks to a happy customer

Cafe Parizade
2200 West Main Street (919) 286-9712
Upscale gourmet Mediterraneant restaurant. Vegetarian-friendly. A

satisfied customer reports that smoking is allowed at the bar, but says "One of the classier places in Durham. We never smelled any smoking inside." Prices are $15 to $30. Reservations OK.
Lunch Mon-Fri 11:30am-2:30pm / Dinner Mon-Th 5:30-10pm / Fri-Sat til 11pm / Sun 5:30pm-9pm

Note: We set the bar (no pun intended) for inclusion on the site at a practical level. We would not include a restaurant which allowed smoking at the bar if there were heaps of totally smokefree alternatives. However, we have few listings for N. Carolina and a customer personally reports a good experience, therefore we do not turn up our collective nose at Parizade, indeed, we are grateful to hear about it. We'll revisit the matter if Durham becomes full of totally smokefree restaurants.

Gran Sabana Restaurant
4853 Hwy 55(Triangle Square Shopping Center) (919) 544-5855
South American (Caribbean) cuisine (something really different from Mexican). Inexpensive and simple atmosphere.

Kim-Son
2425 Guess Road (919) 416-9009
Pleasant, family-run Vietnamese restaurant.
Mon-Sat 11am-2:30pm & 5pm-9pm

The Mad Hatter's Bake Shop
First Union Plaza at Erwin Square
2200 West Main Street (919) 286-1987
Bakery, espresso bar, ice cream soda fountain, lunch cafe, Hat Museum, evening entertainment, meeting rooms.
Mon-Th 7am-7pm / Fri-Sat till 11pm / Sun 9am-4pm

The Mayflower XVI Seafood restaurant
3742 B & C Chapel Hill Blvd. 919-401-9888
Prices are reasonable. Speciality is seafood, mostly fried. Take-out. Casual dress. Family oriented.
Thanks Spam in a Can!

Neo-China
4015 University Drive (919) 489-2828
(behind South Square in the BB&T Plaza)
Chinese restaurant. Decor is modern and upscale but there is no dress code. Original art displayed. Dinners $8-15. Lunch, takeout. Also operates in Raleigh.
Mon-Fri lunch 11am-2:30pm / Sun lunch noon-2:30pm / Sun-Th dinner 4:30pm-10pm / Fri-Sat till 10:30pm
thanks Spring Brooks!

Shrimp Boat
2637 Chapel Hill Boulevard (919) 489-6591
Casual dress; prices low; Southern cooking.
Family owned and run. Familes welcomed. Reasonable prices. Southern side dishes. Causal dress. Take-out. Closed on Saturdays and Sundays

for catering. Hours: 11am-8pm Mon-Friday. Serving the triangle since 1970. Seafood, chicken, BBQ, chuck-wagon. Family size portions available. thanks Spring Brooks! and "Spam in a can" for new details.

FAYETTEVILLE

Bangkok
311 West Dickson Street 527-9531
Thai restaurant, sushi bar.

Thai Diner
514 North College Avenue 582-1804
Ditto.

GREENSBORO

Bamboo House
2221 Fleming Road 336-605-9146

Barnes & Noble Bookstore Cafe
201 Northline Avenue

Bear Rock Cafe
216 Bridford Parkway
705 Friendly Center Road
Deli/bakery/coffeehouse chain. Sandwiches straddle the divide between chi-chi and traditional - large menu, hot sandwiches & vegetarian. Also coffee and pastries. A number of locations in the southeast and midwest. All Bear Rock Cafe's throughout the United States are smoke free locations.

Bert's Seafood
4608 West Market Street
2419 Spring Garden Street

Flaming Wok
359 Four Sea Town Center

Garden Cafe
2403 Battleground Avenue

Grapevine Cafe
435 Dolley Madison Road

Panera
Smokefree chain - soups, sandwiches, coffee. A number of locations in

town.

Poblano's Restaurant
114 North Elm

Rudy's Cafe
7011 Albert Pick Road

Sbarro
350 Four Season Town Center
A nationwide chain serving Italian steam table food. The food is hot, filling (well, heavy) and reasonably priced.

Starbucks
Several locations around town.

Westwind Cafe
119 South Elm Street

GREENVILLE

The Admiral's Cup Coffeehouse
610-A Red Banks Road (The Shops at Lynndale) 252.321.7530
Great site-roasted, fresh coffee
m-th 6:30am to 9:00pm/f-s 6:30am to 11:00pm/sun 8:00am to 8:00pm
casual dress, price range:meals less than $6.

Chefs 505
505 Red Banks Road (252) 355-7505
Restaurant, totally smokefree, casual lunch, fancy dinners, great desserts.

McAlister's Deli
740 SE Greenville Boulevard (252) 353-8000
Cafe and deli. In Greenville smoke free restaurants are rare. This is a very popular one. Casual and good sandwiches

Plum Tree Bistro
731 Red Banks Road 252-353-0088
Totally smokefree. "This is the best of the best, I've dined everywhere and found nothing that can compare this side of New York" says a satisfied customer.

Wings Over Greenville
1400 Charles Blvd. (252) 758-WING (758-9464)

HOT SPRINGS

Mountain Magnolia Inn
Part of a resort. Their elegant dining room is open to the public.
(You do not need to be dressed elegantly!)

HUNTERSVILLE

Bagel Bin & Deli
9815 Sam Furr Road (704) 895-1455
Bagels. Normal ones as well as some that really push the envelope of what a bagel is. Casual and nice. Open early morning to mid-aftrenoon.

top

LUMBERTON

Dobbs Place
2806 West 5th Street (910) 738-8882
Convenience store with Exxon gas station, they also have a game room, ice cream parlor, and Huddle House.
Open 24 hours a day.
thanks Celisa!

MARSHALL

Zuma Coffee
10 South Main Street
32 North Main Street
Thanks Ann Houston of the NC Tobacco Prevention and Control Branch!

The Appalachian Grill
Hwy 25/70
Thanks Ann Houston!

MORRISVILLE

Dakota Grill
9549 Chapel Hill Road (919) 463-9526
Bison burgers and free wi-fi.

NAGS HEAD

Tortuga's Lie
"The Outer Banks Caribbean Style"
Owners: Richard Welch and Bob Sanford
Mile post 11 1/2 on the beach road
252-441-RAWW and 252-441-7299
Seafood and also a Japanese menu.

RALEIGH

WILLIAMSTON

Deadwood
2302 Eds Grocery Road 252-792-8516
A family owned and operated western theme park located in the Bear Grass area of Martin County, North Carolina. Experience scenic train rides, miniature golf, arcade, play ground, carousel, picnic area, ice cream and coffee shop, a full service restaurant and dance hall, featuring live music on Saturday nights

WINSTON SALEM

Qdoba Mexican Grill
57 Miller Street (336) 724-9873

OTHER RESOURCES

Step Up: North Carolina Smokefree Dining
This is a list of lists! Organized by county.

Guildford County Smokefree Restaurants
Searchable list of restaurants maintained by county dept. of public health as part of general health inspection records, with a smokefree option.

GASP of NC: North Carolina Smoke-Free Accommodations and Dining
NC smokefree restaurants - maintained by Group to Alleviate Smoking Pollution, a nationwide group.

North Carolina Smokefree Dining
Listings by county. These listings can also be found at http://www.workingsmokefree.com/

Wake County Human Services
This public agency lists smokefree restaurants for Cary, Raleigh and other cities.

Wake County Smokefree Restaurants

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www.SmokeFreeforhealth.org

The Economic Impact of Florida's Smoke-free Workplace Law

June 25, 2004

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I. Introduction

On November 5, 2002, Florida voters amended Article X, Section 20, of the Florida Constitution by barring tobacco smoke in most enclosed indoor workplaces.[1] This amendment took effect January 7, 2003, and the Legislature subsequently amended the Florida Clean Indoor Air Act to reflect its provisions. Full implementation and enforcement of the Florida Clean Indoor Air Act took effect on July 1, 2003.

The Florida Clean Indoor Air Act prohibits smoking in indoor working places such places as restaurants, hotel lobbies, bars for which more than ten percent of gross revenue is derived from sales of food, and bars and restaurants having an open connection to one another. Places such as stand-alone bars, restaurants' open outdoor patios, hotel guest rooms designated as smoking, and designated lounges in airports for international travelers are exempt from the smoke-free law. Employers in violation of the smoke-free law risk a civil penalty of no less than $250 and no more than $750 for the first violation. Every subsequent violation results in a civil penalty of no less than $500 and no more than $2,000. The individual smokers violating the smoke-free law also will be fined up to $100 for the first violation and up to $500 for each subsequent violation.

The objective of this study is to assess the economic impact of Florida's smoke-free workplace law on hotels, restaurants and tourism. In particular, the study evaluates the effect of the smoke-free workplace law on sales of restaurants and bars and on employment levels in the leisure and hospitality industry.

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[1] Amendment Six, entitled "Protect People from the Health Hazards of Second-hand Tobacco Smoke by Prohibiting Workplace Smoking."

II. Methods

1. Data

Data on gross sales reported for six percent sales and use taxes, by county and by kind of business, were obtained from Florida Department of Revenue. The data covers the period from January 1990 through April 2004, for all sixty seven counties in Florida. For the purpose of this study, they were aggregated to fourteen metropolitan statistical areas (MSAs), as defined by the U.S. Census Bureau. Table 1 - Table 3, respectively, show the annual gross sales at restaurants, lunchrooms and catering services; those at taverns, night clubs, bars and liquor stores; and those from recreational admissions for state of Florida and for fourteen MSAs for calendar years1999 to 2003.[2]

Table 1
Annual Gross Sales at Restaurants, Lunchrooms and Catering Services 1999-2003
(in millions)

MSA	1999	2000	2001	2002	2003
Daytona Beach	$604.6	$566.3	$553.7	$580.6	$623.1
Ft Lauderdale	$1,895.8	$2,136.8	$2,152.5	$2,202.1	$2,451.2
Ft Myers	$543.2	$592.7	$647.7	$675.2	$747.3
Gainesville	$297.8	$310.7	$322.7	$333.6	$343.1
Jacksonville	$1,358.3	$1,413.7	$1,563.5	$1,534.8	$1,593.1
Lakeland	$416.0	$423.1	$420.8	$448.3	$446.8
Melbourne	$517.5	$494.0	$507.5	$536.7	$537.5
Miami	$2,416.2	$2,707.1	$2,945.9	$2,868.5	$3,227.9
Orlando	$2,801.8	$2,987.2	$3,088.6	$3,282.0	$3,467.1
Pensacola	$380.4	$393.1	$410.8	$452.2	$457.0
Sarasota	$715.8	$810.6	$827.7	$838.8	$851.3
Tallahassee	$328.0	$349.9	$364.1	$390.0	$391.2
Tampa	$3,691.7	$2,713.3	$2,864.0	$3,073.6	$3,010.6
West Palm Beach	$1,486.0	$1,660.3	$1,779.4	$1,798.0	$2,040.7
State of Florida	$21,696.0	$22,167.8	$23,238.1	$24,162.4	$25,501.5

[2] The business classification code is 08 for restaurants, lunchrooms, and catering services; 09 for taverns, night clubs, bars, and liquor stores; 59 for admissions to recreational facilities (theaters, rides, pool rooms, dances, ball games, etc.); and 100 for total retail sales.

Table 2
Annual Gross Sales at Taverns, Night Clubs, Bars and Liquor Stores for 1999-2003
(in millions)

MSA	1999	2000	2001	2002	2003
Daytona Beach	$76.4	$76.2	$80.9	$82.7	$82.3
Ft Lauderdale	$215.8	$223.7	$230.1	$226.4	$220.3
Ft Myers	$103.9	$110.1	$118.8	$121.2	$117.6
Gainesville	$31.1	$33.1	$39.9	$40.1	$40.7
Jacksonville	$153.2	$158.4	$170.1	$169.1	$171.0
Lakeland	$42.1	$71.6	$42.8	$37.8	$39.2
Melbourne	$69.0	$71.0	$78.0	$76.2	$74.1
Miami	$235.0	$261.7	$273.1	$325.0	$323.3
Orlando	$223.1	$247.0	$325.4	$252.2	$264.5
Pensacola	$92.9	$70.1	$96.8	$98.9	$64.2
Sarasota	$111.9	$118.1	$117.1	$96.9	$97.9
Tallahassee	$41.6	$38.5	$42.8	$48.6	$51.0
Tampa	$449.3	$370.9	$389.1	$397.4	$383.5
West Palm Beach	$176.0	$191.3	$194.6	$197.9	$194.3
State of Florida	$2,722.7	$2,773.3	$2,973.7	$2,942.1	$2,853.9

Table 3
Annual Gross Sales from Admissions for 1999-2003
(in millions)

MSA	1999	2000	2001	2002	2003
Daytona Beach	$78.8	$83.6	$82.8	$97.3	$110.0
Ft Lauderdale	$289.2	$309.2	$309.3	$327.2	$297.8
Ft Myers	$108.7	$126.1	$137.3	$150.2	$166.7
Gainesville	$22.5	$23.5	$21.9	$25.5	$27.9
Jacksonville	$210.7	$209.8	$218.4	$225.2	$246.6
Lakeland	$66.2	$68.1	$63.5	$64.4	$64.6
Melbourne	$53.0	$47.7	$47.8	$56.6	$57.5
Miami	$338.7	$390.2	$376.8	$417.8	$460.5
Orlando	$2,668.0	$3,029.8	$2,892.0	$2,596.2	$2,871.8
Pensacola	$37.2	$37.9	$36.9	$36.9	$38.1
Sarasota	$106.8	$121.0	$125.4	$131.6	$134.9
Tallahassee	$32.6	$36.3	$32.4	$33.3	$34.0
Tampa	$621.4	$651.2	$869.5	$732.3	$758.2
West Palm Beach	$332.9	$385.5	$406.8	$412.1	$432.5
State of Florida	$5,784.2	$6,430.6	$6,569.9	$6,326.8	$6,780.1

Data on employment by MSA and by industry were obtained from the Current Employment Statistics (CES) provided by Florida's Agency for Workforce Innovation from January 1993 through March 2004. The CES are generated through an annual benchmark and monthly sample link procedure. Annual universe counts or benchmark levels are generated primarily from administrative records on employees covered by unemployment insurance tax laws. These annual benchmarks established for March of each year are projected forward for each subsequent month based on the trend of the sample employment. Florida estimates are derived from a sample of approximately 16,000 business establishments.[3]

Employment data in leisure and hospitality industry are available for fourteen MSAs, but employment data for accommodation and food services are available only for the following MSAs: Ft Lauderdale, Jacksonville, Miami, Orlando, Tampa-St. Petersburg-Clearwater, West Palm Beach-Boca Raton. These six MSAs, however, account for almost seventy percent of the total nonagricultural employment in the state of Florida. Table 4 and Table 5, respectively, show the average monthly employment in leisure and hospitality industry and in accommodation and food services for state of Florida and for the aforementioned MSAs from 1999 to 2003.

[3] The classification code for the leisure and hospitality industry is 70000000; the classification code for accommodation and food services is 70720000; the classification code for accommodation only is 70721000; and the classification code for drinking and eating places only is 70721000.

Table 4
Average Monthly Employment in the Leisure and Hospitality Industry for 1999-2003 (in thousands)

Areas	1999	2000	2001	2002	2003
Daytona Beach	20.4	20.9	21.1	21.5	21.6
Ft Lauderdale	67.3	69.4	71.7	72.4	73.8
Ft Myers	18.8	20.5	21.4	22.6	23.2
Gainesville	11.6	11.6	12.1	11.9	11.6
Jacksonville	48.7	49.8	50.7	52.1	52.1
Lakeland	14.4	14.9	15.1	15.8	15.6
Melbourne	18.2	18.1	18.6	18.6	18.6
Miami	89.2	92.4	94.6	90.4	92.1
Orlando	176.9	177.0	170.6	165.0	169.9
Pensacola	14.7	14.1	15.7	15.7	16.0
Sarasota	25.4	26.4	27.0	27.8	28.6
Tallahassee	11.6	11.5	12.4	12.7	13.1
Tampa	100.1	103.1	105.6	106.9	108.1
West Palm Beach	53.9	56.5	59.7	60.6	60.6
State of Florida	757.6	772.9	794.1	797.4	808.5

Table 5
Average Monthly Employment in Accommodation and Food Services for 1999-2003 (in thousands)

Areas	1999	2000	2001	2002	2003
Ft Lauderdale	56.4	58.5	61.3	61.9	63.1
Jacksonville	42.1	42.6	44.4	45.5	45.8
Miami	77.2	80.3	82.3	79.0	80.8
Orlando	115.0	113.5	109.3	107.6	111.9
Tampa	83.9	87.2	87.6	89.1	89.3
West Palm Beach	41.6	42.8	46.1	46.9	47.4
State of Florida	606.6	614.3	631.3	637.3	651.3

2. Econometric Method

This study employed multivariate regression analysis to estimate the impact of Florida's smoke-free workplace law on sales and employment levels of Florida's leisure and hospitality industry. The study used a fixed effect panel data framework in which

data of fourteen MSAs in Florida were pooled. A fixed effect variable for each MSA is used to control for area-specific factors affecting sales and employment levels in leisure and hospitality industry for each MSA that do not vary significantly over time such as the number of tourist destinations. By pooling the data of the fourteen MSAs, the study assumes the percentage impact of the smoke-free law is the same across MSAs.

3. Dependent Variables

The outcome measures are monthly gross sales of restaurants, lunchrooms and catering services, monthly gross sales of taverns, night clubs, bars and liquor stores, and those of recreational admissions, and monthly employment levels in the leisure and hospitality in each MSA. To control for changes in population and income growth, inflation, and changes in underlying economic conditions, the study used the fraction of gross sales from restaurants, bars, and admissions, and the fraction of employment level in leisure and hospitality industry. The fractions were computed – for each MSA i and period j – as follows:

$$S_{ij}^{R} = \frac{\textit{Sales from Restaurants, Lunching Rooms, Catering Services}}{\textit{Total Retail Sales}};$$

$$S_{ij}^{T} = \frac{\textit{Sales from Taverns, Night Clubs, Bars, Liquor Stores}}{\textit{Total Retail Sales}};$$

$$S_{ij}^{Ad} = \frac{\textit{Sales from Admissions}}{\textit{Total Retail Sales}};$$

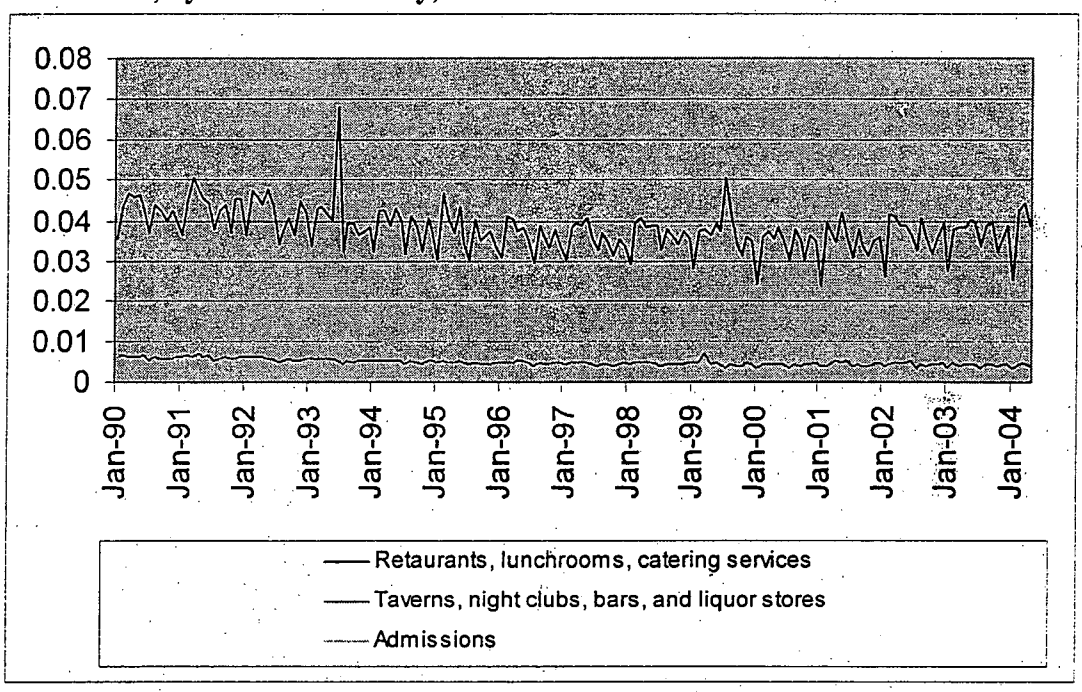
$$E_{ij}^{L} = \frac{\textit{Employment in Leisure and Hospitality}}{\textit{Total Employment Level}};$$

$$E_{ij}^{Ac} = \frac{\textit{Employment in Accommodations}}{\textit{Total Employment Level}};$$

and $$E_{ij}^{D} = \frac{\textit{Employment in Drinking and Eating Places}}{\textit{Total Employment Level}}.$$

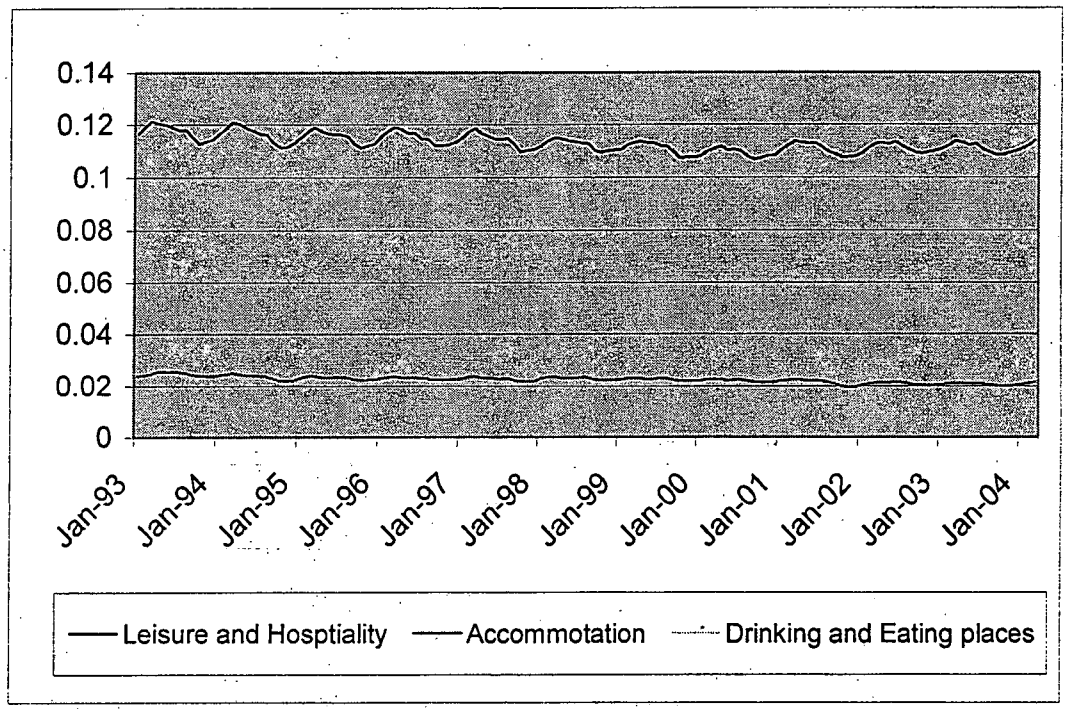
Figure 1 presents as fractions of the total retail sales the statewide gross sales of restaurants, lunchrooms, catering services; those of taverns, night clubs, bars, liquor stores; and those from admission, respectively. The employment in the leisure and hospitality industry, the employment in the accommodation industry, and the employment in drinking and eating places, respectively, as a fraction of the total nonagricultural employment are presented in Figure 2 for the state of Florida. None shows any obvious changes after the smoke-free law took effect.

Figure 1
The sales, by relevant industry, as a fraction of the total retail sales for Florida.



The absolute impact of the smoke-free law may not be the same for all MSAs. It may be greater in MSAs where the employment in and sales from the leisure and hospitality industry constitute a larger share of the MSA's total employment and retail sales. To illustrate our point, suppose sales from restaurants account for 10% of the total retail sales in MSA X but 1% of the total retail sales in MSA Y. If the smoke-free law reduces each restaurant's business by 10%, the fraction of sales from restaurants in X will drop to about 9% of the MSA's total retail sales while the fraction of sales from restaurants in X will drop to about 0.9% of the MSA's total retail sales. Apparently, the absolute impact of the smoke-free law on the fraction of sales from restaurants is larger in X compared to that in Y. To address this issue, the study used the natural logarithm of the above variables as independent variables. By doing so, the study estimated the percentage

Figure 2.
Employment, by relevant industry, as a fraction of the total nonagricultural employment in Florida.



impact, instead of the absolute impact, for MSAs of the smoke-free law on gross sales and employment levels of the leisure and hospitality industry as a fraction of the total retail sales and a fraction of the total nonagricultural employment, respectively.

4. Independent Variables

The primary variable of interest was a dummy variable called LAW_j which was designed to capture the effect of the smoke-free law. The study assigned to LAW_j the value 1 for all months starting with July 2003 when the smoke-free law took effect, and zero for all the months before July 2003. The coefficient of LAW_j is expected to be negative, zero, or positive as the smoke-free law reduces, has no effect, or increases the employment levels or sales of the leisure and hospitality industry. This coefficient represents the average percentage impact of the smoke-free law across Florida's MSAs.

The fixed effect model in this study uses a dummy variable MSA_i for each MSA to control for the influence of MSA specific factors that do not varying over time, where MSA_i equals 1 for the i^{th} MSA and zero for all the other MSAs. General economic trends in each MSA were accounted for by including a time variable for each MSA, which is equal to the calendar year of the data. This study also includes a dummy variable $MONTH_n$ to control for seasonal influences on the employment levels and sales of the leisure and hospitality industry. $MONTH_n$ equals 1 for month n and zero for all the other months. With theses variables, we use equation (1) to estimate the natural logarithms of S_{ij}^R, S_{ij}^T, E_{ij}^L, E_{ij}^D.

$$\ln M_{ij} = \beta_0 + \beta_1 LAW_j + \sum_{k=2}^{17} \beta_k \times MSA_i + \beta_{68} \sum_{k=18}^{33} \beta_k \times MSA_i \times YEAR + \sum_{k=2}^{16} \beta_k \times MONTH_n + \varepsilon \quad (1)$$

where j is an index of the time period, i is an index of MSAs (k =*1, 2, ..., 16*), and ln M_{ij} represents the natural logarithms of the dependent variables) for the i^{th} MSA at time period j. The β terms are the coefficients to be estimated, while the term ε represents random error. The statewide percentage monthly impact of the smoke-free law (denoted as $\%\Delta M$) can be calculated using the following formula: $\%\Delta M = (e^{\beta_1} - 1) \times 100\%$. Furthermore, the absolute monthly impact of the smoke-free law on a specific MSA i (denoted as ΔM_i) can be recovered using the following formula: $\Delta M_i = (e^{\beta_1} - 1) \times M_i$.

The terrorist attack on September 11th, 2001 has had a negative impact on the accommodation and tourism industries throughout the nation, perhaps especially in Florida. To account for this effect, equation (2) is used to estimate the effect of the smoke-free law on the gross sales of recreational admissions and the employment levels of the accommodation industry.

$$\ln H_{ij} = \beta_0 + \beta_1 LAW_j + \sum_{k=2}^{17} \beta_k \times MSA_i + \beta_{68} \sum_{k=18}^{33} \beta_k \times MSA_i \times YEAR + \sum_{k=34}^{45} \beta_k \times MONTH_n + \beta_{46} SEP11_j + \varepsilon$$

Let ln H_{ij} represents the natural logarithms of the dependent variables (S_{ij}^{Ad} and E_{ij}^{Ac}) for the i^{th} MSA at time period j. The dummy variable SEP11$_j$ is one for all the time periods after September 2001 and zero for all the other time periods. Both the percentage impact and absolute impact of the smoke-free law can be recovered from β_1 using formulas as presented earlier. Table 6 summarizes the variables used in these two equations.

Table 6
Regression Variables

Variable	Definition
S_{ij}^{R}	The fraction of retail sales from restaurants, lunching rooms and catering services for the i^{th} MSA at time period j.
S_{ij}^{T}	The fraction of retail sales from taverns, night clubs, bars and liquor stores for the i^{th} MSA at time period j.
S_{ij}^{Ad}	The fraction of retail sales from admissions for the i^{th} MSA at time period j.
E_{ij}^{L}	The fraction of employment of the leisure and hospitality industry for the i^{th} MSA at time period j.
E_{ij}^{Ac}	The fraction of employment of the accommodation industry for the i^{th} MSA at time period j.
E_{ij}^{D}	The fraction of employment of drinking and eating places for the i^{th} MSA at time period j.
LAW_j	A dummy variable equals 1 for all the time period that the smoke-free law is in effect, and 0 for all the other time periods.
MSA_i	A dummy variable equals 1 for the i^{th} MSA and 0 for all the other MSAs, where $i = 1, \ldots, 16$
YEAR	A variable indicating the calendar year
$MONTH_n$	A dummy variable equals 1 for month n, and 0 for all the other month.
$SEP11_j$	A dummy variable equals 1 for all the time periods after September 2001 and is zero for all the other time periods

III. Results

Tables 7 and 8 present results of the multivariate analysis, with the t-statistics in parentheses. A shaded cell indicates the correspondent variable is significant at least at the 0.05 level, i.e., we are at least 95% confident that the correspondent variable has an effect on the dependent variable. The regression equations are highly significant based upon the F-test,[4] indicating the specified functional forms perform well in describing the relationship between the dependent variable and the independent variables on the left-

[4] Where the F-test, here denoted by Prob > F, presents the probability that, given the F-statistic (omitted), the regression is statistically insignificant.

hand side of each equation. Additionally, the adjusted R^2s indicate that the regression models are able to explain from 74% to 99% of the variation of the dependent variables.[5]

Table 7 summarizes the results for gross sales of restaurants, lunching rooms, and catering services as a fraction of the total retail sales (S_{ij}^{R}), gross sales of taverns, night clubs, bars, and liquor stores (S_{ij}^{T}), and gross sales from admissions as a fraction of total retail sales (S_{ij}^{Ad}). The coefficient of LAW in the first regression is 0.0711, which indicates that the fraction of the retail sales after the smoke-free law by restaurants, lunching room, and catering services increased by 7.37 percent, where the percentage increase is determined as follows: $(e^{-.0711}-1)\times 100\% = 7.37\%$.[6] This increase is highly statistically significant, as is evident by the large t-statistic. Although the results show that the fraction of the retail sales by taverns, night clubs, bars, and liquor stores, and the fraction of retail sales from admission also increased after the smoke-free law took effect, these increases are not statistically significant.

[5] Where ajusted R^2 captures the explanatory power of a regression, and the percentage of the dependent variable's variation explained equals $R^2 \times 100$

[6] Please note that the percentage changes for all outcome measures are recovered in likewise manners.

Table 7
Regression Results of Retail Sales

	$\ln S_{ij}^{R}$	$\ln S_{ij}^{T}$	$\ln S_{ij}^{Ad}$
LAW	0.0711	0.0074	0.0139
	(5.76)	(0.42)	(0.59)
SEP11	--	--	-0.0010
	--	--	(-0.06)
$MONTH_2$	0.2488	0.0119	0.2803
	(19.8)	(0.66)	(12.59)
$MONTH_3$	0.2728	0.0058	0.2628
	(21.71)	(0.32)	(11.8)
$MONTH_4$	0.2550	0.0440	0.2597
	(20.29)	(2.42)	(11.67)
$MONTH_5$	0.2622	0.0012	0.1706
	(20.47)	(0.07)	(7.52)
$MONTH_6$	0.1940	-0.0111	0.0427
	(15.14)	(-0.6)	(1.88)
$MONTH_7$	0.0583	-0.1751	0.0377
	(4.56)	(-9.47)	(1.66)
$MONTH_8$	0.1920	-0.0778	0.1752
	(15.01)	(-4.21)	(7.73)
$MONTH_9$	0.1388	-0.1053	0.0643
	(10.85)	(-5.7)	(2.83)
$MONTH_{10}$	0.0993	-0.0786	0.0384
	(7.76)	(-4.26)	(1.69)
$MONTH_{11}$	0.1898	-0.0605	0.1426
	(14.84)	(-3.28)	(6.29)
$MONTH_{12}$	0.1619	-0.0073	0.1911
	(12.66)	(-0.4)	(8.42)
Prob > F	0.000	0.000	0.000
Adjusted R^2	0.7379	0.7631	0.8493

Table 8 summarizes the results for the employment in the leisure and hospitality industry, the employment in the accommodation, and the employment in drinking and eating places, respectively, as a fraction of the total nonagricultural employment (E_{ij}^{L} ,

E_{ij}^{D}, and E_{ij}^{Ac}, respectively). The results indicate that the fraction of the employment in the leisure and hospitality industry went up by 1.98% after the smoke-free law took effect. This increase is very significant statistically. The fraction of the employment in drinking and eating places rose by 4.53% after the smoke-free law took place, and this increase is also highly significant. The results also show that the fraction of the employment in accommodation went down by 0.8% after the smoke-free law took effect, however, this decrease is not statistically significant.

Note the September 11th event did have a statistically significant negative effect on employment in accommodation. However, the effect of the September 11th event on sales from recreational admissions is not statistically significant. The regression results for the MONTH dummies show that there are significant seasonal effects in the leisure and hospitality industry in Florida, and the seasons do not coincide with the calendar quarters. This cautions against simply using calendar quarters to characterize the seasons for the leisure and hospitality industry as done in some of the previous studies on the economic impact of smoking regulations

Table 8
Regression Results of Employment

	$\ln E_{ij}^{L}$	$\ln E_{ij}^{Ac}$	$\ln E_{ij}^{D}$
LAW	0.0200	-0.0080	0.0453
	(5.34)	(-1.03)	(8.14)
SEP11	--	-0.0169	--
	--	(-2.81)	--
$MONTH_2$	0.0167	0.0194	0.0132
	(4.23)	(2.48)	(2.25)
$MONTH_3$	0.0310	0.0260	0.0248
	(7.85)	(3.32)	(4.22)
$MONTH_4$	0.0274	0.0206	0.0158
	(6.76)	(2.57)	(2.61)
$MONTH_5$	0.0180	0.0122	0.0174
	(4.45)	(1.52)	(2.89)
$MONTH_6$	0.0151	0.0126	0.0109
	(3.72)	(1.58)	(1.8)
$MONTH_7$	0.0022	0.0113	-0.0107
	(0.54)	(1.41)	(-1.79)
$MONTH_8$	-0.0019	0.0008	-0.0065
	(-0.47)	(0.1)	(-1.08)
$MONTH_9$	-0.0152	-0.0147	-0.0189
	(-3.77)	(-1.83)	(-3.14)
$MONTH_{10}$	-0.0228	-0.0226	-0.0262
	(-5.65)	(-2.82)	(-4.35)
$MONTH_{11}$	-0.0144	-0.0220	-0.0178
	(-3.57)	(-2.74)	(-2.96)
$MONTH_{12}$	-0.0120	-0.0215	-0.0104
	(-2.98)	(-2.69)	(-1.72)
Prob > F	0.000	0.000	0.000
Adjusted R^2	0.9755	0.9927	0.8918

Table 9 summarizes the estimated coefficient of the LAW variable in each of the six regressions and its 95% confidence interval. The 95% confidence interval defines the range where we are 95% confident about the true value of the coefficient lies.

Coefficients whose confidence intervals including 0 (the number zero) are said to be not statistically significant at the given confidence level.

Table 9
Coefficient and Confidence Intervals of LAW for Each Outcome Measure

Outcome Measure	LAW	95% Confidence Interval
$\ln S_{ij}^{R}$	0.0711	[0.0469, 0.0953]
$\ln S_{ij}^{T}$	0.0074	[-0.0275, 0.0423]
$\ln S_{ij}^{Ad}$	0.0138	[-0.0325, 0.0602]
$\ln E_{ij}^{L}$	0.0200	[0.0127, 0.0273]
$\ln E_{ij}^{Ac}$	-0.0080	[-0.0233, 0.0072]
$\ln E_{ij}^{D}$	0.0453	[0.0344, 0.0563]

IV. Discussion

This study examined gross sales and employment levels in Florida's leisure and hospitality industry before and after Florida's smoke-free workplace law took effect. We could not find a significant negative effect of the smoke-free law on sales and employment in the leisure and hospitality industry in Florida. Among the six measures of gross sales and employment levels studied, we found that the fraction of retail sales from restaurants, lunchrooms and catering services, the faction of the employment in drinking and eating places, and the fraction of the employment in leisure and hospitality industry as a whole went up after the smoke-free law took effect. The fraction of retail sales from taverns, night clubs, bars and liquor stores, the fraction of retail sales from recreational admissions, and the fraction of employment in accommodation have no significant changes.

This study analyzed separately sales data for restaurants, lunchrooms and catering services as one group, and taverns, night clubs and bars as another group, thus addressing a concern previous studies had using sales data of all eating and drinking places as a whole: If there is a migration of dining from restaurants to taverns and bars where smoking is still allowed under the smoke-free law, analysis using sales data of all eating and drinking places as a whole cannot detect any effect even if there is a sales reduction restaurants and a sales increase in taverns and bars. Results of this study show that, while the fraction of the sales of restaurants, lunchrooms and catering services went up after the smoke-free law took effect, there is no significant change in the faction of sales of taverns, night clubs, and bars.

As in the case with many other studies, the analysis has limitations worth mentioning. One is the limited data for periods after the smoke-free law took effect. With our best effort, sales data were obtained up to April 2004 and employment data were obtained up to March 2004. With nine to ten month of data after the smoke-free law took effect, impacts from other random events that simultaneously affected the leisure and hospitality industry across Florida may not be accounted for. Furthermore, the study did not verify the enforcement of the smoke-free law. If the smoke-free law is not strictly enforced, its effect on the leisure and hospitality industry may not be apparent or might be significantly reduced. When feasible, future studies should include longer data series for periods after the smoke-free law and information on the compliance and enforcement of the smoke-free law.

Environmental Tobacco Smoke Regulations Have Not Hurt Restaurant Sales in North Carolina

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North Carolina Medical Journal, 1998; 59: 284-287.

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(note: tables and figures are not available on-line)

The US Environmental Protection Agency, on review of available scientific evidence, has concluded that exposure to environmental tobacco smoke (ETS) causes serious and substantial health problems in this country.1 In 1992, the EPA declared tobacco smoke a Class A carcinogen, in the same category with asbestos, radon, and benzene. Exposure to ETS causes an estimated 3000 lung cancer deaths per year and a variety of respiratory illnesses in nonsmoking adults.1 Even more troubling, recent research shows that ETS causes heart disease. This means that there are 10-20 times as many ETS-related deaths from heart disease as from lung cancer.2 This toxic legacy is not surprising; ETS contains more than 4000 chemicals, 200 poisons, and 43 carcinogenic compounds.1,3

As we have become more aware of the harmful effects of tobacco use, many US communities have implemented ordinances to regulate smoking in workplaces and public places, including restaurants. Restaurateurs and restaurant associations have challenged these regulations by claiming that ETS ordinances cause economic damage to their business.4,5 Although such claims have been contradicted by several studies showing that ETS regulations do not have a negative economic impact,4,6-10 claims of lost revenue persist,4,5 hindering informed debate and the passage of strong ETS regulations. These claims are particularly common in tobacco-producing states, but in those states there has been no comprehensive examination of the economic impact of ETS ordinances on restaurant sales.

In 1989, the city of Greensboro passed the first significant ETS legislation in North Carolina.11 Several communities followed suit, prompting the tobacco industry to sponsor legislation in the 1993 NC General Assembly intended to preempt or prevent local communities from passing regulations more stringent than the proposed statewide law. The law, HB957, which passed in July 1993, contained no health measures to protect the public from ETS exposure, but it gave a 3-month window during which communities could adopt their own regulations. In that short time, 27 Boards of Health, 21 County Commissioners, and 41 City Councils passed 89 ETS regulations.11 Previous studies have assessed the processes by which these ETS regulations were passed, the politics leading to passage, and the degree of public health protection from ETS exposure they provide.11,12 To evaluate tobacco industry assertions about the negative effects of ETS ordinances, we looked at the economic impact of these ETS regulations on restaurant sales and the resultant political consequences.

METHODS

The various ETS ordinances passed by North Carolina counties and communities differ in the degree of protection they offer.12 We examined the impact of ETS ordinances on restaurant sales only in counties with stringent ETS ordinances that had been passed by Boards of Health because such Boards maintain countywide jurisdiction. The Boards of Health all adopted at least 33% nonsmoking areas in restaurants, increasing the amount of restaurant area covered to 80%-100% within 1-2 years in most cases. For comparison, we examined counties that did not have any restaurant ETS ordinance during the study

time. We matched counties with and without an ETS ordinance on the basis of population, per capita income, and acres of tobacco harvested; we analyzed the 5 best matches (Table 1, next page).

Data on county restaurant and gross retail sales were obtained from the NC Department of Revenue, Tax Research Division, for 6 fiscal years from 1990-1991 through 1996-1997 (data for fiscal year 1991-1992 were unavailable). The NC Department of Revenue is an objective and consistent data collector and collects economic information from all eating establishments in a county, not just a random sample.

Following the model of Glantz and Smith,4 population growth, inflation, and changes in underlying economic conditions were accounted for by computing the fraction (F) of total retail sales represented by restaurant sales (F= restaurant sales/total retail sales). If an ordinance adversely affects restaurant sales, F will drop after the ordinance goes into effect. We also compared restaurant sales in cities with an ordinance to those in cities without an ordinance by calculating the ratio (C) of sales in paired counties (C= restaurant sales in counties with ordinance/restaurant sales in counties without ordinance). If an ordinance adversely affects restaurant sales, C will drop after the ordinance goes into effect. Significance of differences over time in F and C were tested using paired t-tests, along with regression analyses according to the model of Glantz and Smith.4 Models were adjusted to account for varying dates and degrees of implementation.

RESULTS

The 5 counties with strong ETS ordinances and the 5 without each had a combined population of over 900,000 (thus accounting for about 30% of the stateâs population). These counties included both tobacco producing and nonproducing areas, but 3 of the 5 ordinance counties harvested more acres of tobacco annually than the matching nonordinance counties (Table 1).

Table 2 summarizes the findings relative to F, the fraction of restaurant sales to total retail sales. There was little fluctuation in F over the five fiscal years in counties with and without ETS ordinances. The mean value of F in counties with an ETS ordinance (9.1) was higher than the mean value of F in counties without an ETS ordinance (8.3). The standard deviation of the means of F were quite small both in counties with and without ETS ordinances, indicating relative homogeneity in restaurant sales over the study period. Counties without ETS ordinances showed increases and decreases similar to those in matched counties with ETS ordinances.

Table 3 summarizes the results of the ratio (C) of restaurant sales in cities with an ordinance to restaurant sales in cities without an ordinance. There were no consistent changes in restaurant sales after the ETS ordinances took effect.

Paired t-tests showed no significant difference in combined restaurant sales in the 10 counties for fiscal years 1990-1991 and 1992-1993, prior to the ordinances, compared to sales for fiscal years 1994-1997, following implementation of the ordinances. There also were no statistically significant differences by regression analyses and the coefficients for F or C.

DISCUSSION

Our data show that implementation of stringent ETS regulations had no adverse economic impact on restaurant sales in 5 North Carolina counties. These findings are consistent with those from other communities,4,6,7-10 and are not the first to show the absence of negative effect from ETS regulations in a major tobacco producing state. Our findings confirm 2 small telephone studies conducted in Wake and Orange counties to determine the impact of their local ordinances. In both counties, a majority of

restaurant owners or managers said that their countyâs ETS ordinance had no negative economic impact on their business.13,14

Major tobacco-producing states have generally resisted comprehensive ordinances regulating ETS exposure.11,15 For instance, at the beginning of 1993, Kentucky, North Carolina, South Carolina, Georgia, and Tennessee had passed a total of only 11 local ETS ordinances, and few of them offered significant public protection from ETS exposure.15 By October 1993, North Carolina communities had passed a total of 89 ETS ordinances in response to preemption legislation passed by the General Assembly.12

The rights of Boards of Health to pass ETS regulations have been threatened. In December 1996, the NC Court of Appeals invalidated the Halifax County Board of Health ETS ordinance because the ordinance had granted exceptions to the regulations based on perceived economic harm to smaller restaurants or because of difficulty in enforcement.16 The Court of Appeals recognized the authority of a Board of Health to pass ETS regulations, but denied it the authority to create exceptions unless they are based on public health. Rulings in New York and Ohio also state that a Board of Health can regulate ETS exposure in public places but cannot create exceptions to an ETS ordinance based on non-health related concerns.17

The NC Court of Appeals decision affected not only Halifax but all counties with similar Board of Health ETS ordinances. By February 1997, 14 Boards of Health had suspended enforcement of their ETS regulations, 7 were undecided on their course of action, and only 5 were attempting to uphold their ordinances (personal communication, J. Barnhardt, 9/24/97). Most said they needed legislative action to enable them to redress the issue because the 1993 statewide preemption bill (HB957) currently prevents them from adopting new ordinances. Now, virtually all NC Board of Health regulations have been suspended, or left on the books with no enforcement.

Thus, ironically, HB957, which was the impetus for communities throughout the state to adopt ETS ordinances, now prevents them from protecting citizens from exposure to ETS. HB957 prevents North Carolina communities from working toward stronger, more protective regulations; the majority of health ETS ordinances passed by county boards have been invalidated and Boards of Health are prevented from passing regulations to replace those annulled by the Halifax County Court of Appeals decision. The lack of statewide or significant local ETS regulations presents a clear danger and challenge to public health.

CONCLUSION

Until recently, ordinances in many North Carolina counties provided protection from ETS exposure in workplaces and public places, including restaurants. Our research shows that this protection resulted in no adverse economic effect on the restaurant industry. Even in the number one tobacco-producing state in the US, ETS regulations present no adverse economic impact, and there is no need for exceptions to the ordinances based on such fears. Now we must ask our legislators to muster the political will to enact such legislation.

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House Pages

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MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Thursday, May 19, 2005

The House Committee on Judiciary IV met on Thursday, May 19, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bill Culpepper, Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced pages and sergeants-at-arms serving at the meeting.

Chairman Weiss introduced HB 1392 – FAILURE TO RETURN HIRED MOTOR VEHICLE, which was displaced at the Judiciary IV meeting on May 12 2005. Representative Kiser moved to adopt the Proposed Committee Substitute for discussion purposes. The motion was adopted. Speaking on changes to the Proposed Committee Substitute, Representative Glazier said that the controversial second criteria for the prima facie portion of the statute has been taken out; the bill, otherwise, remains the same but the issue that was the genesis of concern at the last meeting was removed. Representative Glazier moved for a favorable report on the Proposed Committee Substitute, unfavorable to the original bill. The motion was adopted.

A Proposed Committee Substitute was presented for the next bill, HB 661 – SUBSTANTIATION APPEAL PROCESS/JUV. ABUSE/NEG. A motion by Representative Justus to adopt the PCS for discussion purposes was adopted. Representative Glazier, a Primary Sponsor, spoke on the bill. He then spoke on changes to the bill noting that there have been many drafts of the bill with Division of Social Service Directors, representatives of the Department of Health and Human Services and Administrative Office of the Courts and staff participating. Discussion followed with Ms. JoAnn Lamm, DHHS, Mr. Steve Rose, Staff Counsel, and Representative Glazier answering questions. Rep. Justus moved to amend the bill. The amendment was adopted. Representative Glazier moved to amend the bill to make technical changes. The motion to adopt Amendment #2 was adopted. The Chair displaced the bill while amendments were being prepared.

The next bill, HB 1504 - LAW ENFORCEMENT OFFICER DISCIPLINE, was introduced. Representative Martin, Primary Sponsor, moved to adopt the Proposed Committee Substitute for discussion purposes. The motion was adopted. He then spoke on the bill. Discussion followed.

Chairman Weiss announced that, as time was running short and the amendments to HB 661 were ready, she would take up those amendments and continue with HB 1504 at the next meeting.

With HB 661 before the committee and another amendment ready, Rep. Glazier moved to adopt the amendment to the bill. The motion to amend was adopted (Amendment #3). Rep. Daughtry moved to amend the bill. Amendment #4 was adopted. A question on personal service was raised. As there was not enough time for discussion of the question, the bill was displaced to the next meeting.

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda; HB 1392: Committee Report, Bill, Bill Analysis, Committee Substitute; HB 661: Bill, Bill Analysis, Amendments (4), Proposed Committee Substitute; HB 1504: Bill, Bill Analysis, Proposed Committee Substitute; Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, May 19, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 1392 - FAILURE TO RETURN HIRED MOTOR VEHICLES.
Representatives Glazier and Kiser

HB 661 – SUBSTANTIATION APPEAL PROCESS/JUV. ABUSE/NEG.
Representatives Glazier, Alexander and Barnhart

HB 1504 – LAW ENFORCEMENT OFFICER DISCIPLINE.
Representative Martin

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1392 A BILL TO BE ENTITLED AN ACT TO CLARIFY THE LAW AND PROCEDURE PERTAINING TO THE FAILURE TO RETURN A HIRED MOTOR VEHICLE.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

H 1

HOUSE BILL 1392

Short Title:	Failure to Return Hired Motor Vehicles.	(Public)
Sponsors:	Representatives Glazier and Kiser (Primary Sponsors).	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW AND PROCEDURE PERTAINING TO THE FAILURE TO RETURN A HIRED MOTOR VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person failing to return it is guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,
   a. Within 10 days, and
   b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-163.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instruments, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made. Demand may be made in one of three ways:

a. By personal service.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease or rental agreement. Demand is effective upon hand delivery, mailing (even if the demand is returned as undeliverable), or delivery to the last know address.

(2) In a prosecution under G.S. 14-167, failed or refused to pay any amount due that is incurred after the lease, bailment, or rental agreement has expired, and after written demand is made. Amounts due include unpaid fees for the time period during which the vehicle was not returned and include the lesser of the cost of repairing or replacing the vehicle if it has been damaged.

(3) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 4. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167 shall immediately report the failure to the United States Department of Justice Stolen Vehicle System. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall immediately report the recovery to the United States Department of Justice Stolen Vehicle System. The officer shall also immediately

attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 5. This act is effective when it becomes law.

HOUSE BILL 1392:
Failure to Return Hired Motor Vehicles

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 12, 2005
Introduced by:	Reps. Glazier, Kiser	**Summary by:**	Trina Griffin
Version:	PCS to First Edition H1392-CSSV-26		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 1392 would create a new Class H felony offense for failure to return a hired motor vehicle valued in excess of $4,000. It provides that it shall be prima facie evidence of intent to commit the crime where (1) the person fails to return the vehicle at the end of the lease within 72 hours of written demand; (2) fails to pay amounts due at the end of the lease after demand; or (3) obtained lease of the vehicle through presentation of false identification. Upon receiving information that a hired motor vehicle has not been returned, the bill would also require law enforcement to report that information to the National Criminal Information Computer.***

CURRENT LAW:

Failure to return hired property. – G.S. 14-167 provides that a person who rents or hires any horse, mule, or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who willfully fails to return it to the possession of the person from whom the property has been rented or hired at the expiration of the rental or lease period is guilty of a Class 2 misdemeanor. The punishment for a Class 2 misdemeanor is 1-60 days, with a possible active sentence based on the defendant's prior record.

Hiring with intent to defraud. – G.S. 14-168 provides that any person who shall, with intent to cheat and defraud the owner thereof of the rental price therefor, hire or rent any horse or mule or any other like animal, or any buggy, wagon, truck, automobile or other like vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, or who shall obtain the possession of the same by false and fraudulent statements made with intent to deceive, which are calculated to deceive, and which do deceive, is guilty of a Class 2 misdemeanor.

Conversion by bailee, lessee, tenant, or attorney-in-fact. – G.S. 14-168.1 provides that every person entrusted with any property as bailee, lessee, tenant or lodger, or with any power of attorney for the sale or transfer thereof, who fraudulently converts the same, or the proceeds thereof, to his own use, or secretes it with a fraudulent intent to convert it to his own use, is guilty of a Class 1 misdemeanor. If, however, the value of the property converted or secreted, or the proceeds thereof, is in excess of four hundred dollars ($400.00), every person so converting or secreting it is guilty of a Class H felony. In all cases of doubt the jury shall, in the verdict, fix the value of the property converted or secreted.

BILL ANALYSIS:

Section 1 of the bill creates a new Class H felony offense for failure to return a hired or leased truck, automobile, or other motor vehicle valued in excess of $4,000. The minimum presumptive sentence for a Class H felony is 5 months and the maximum presumptive sentence is 20 months.

Section 2 of the bill makes a conforming change as the result of new language in Section 3 of the bill.

Section 3 of the bill creates a new statutory section setting forth what constitutes prima facie evidence of the intent to commit a crime under G.S. 14-167 (Failure to return hired property), G.S. 4-168 (Hiring with intent to defraud), and G.S. 14-168.1 (Conversion by bailee, lessee, tenant, or attorney-in-fact).

- Failure or refusal to return the vehicle after the lease, bailment, or rental agreement has expired within 72 hours after written demand is made.
- Obtaining lease of a vehicle by presentation of false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

The written demand for return of the vehicle may be made to the person's last known address by either (1) personal service in accordance with Rule 4(j) of the Rules of Civil Procedure; (2) by certified mail, return receipt requested; (3) by deposit with a designated delivery service. The demand is effective either upon hand delivery or delivery by a designated delivery service, or three days after deposit in the mail.

Section 4 of the bill deleted the requirement that law enforcement report thefts and recoveries of motor vehicles to the DMV "immediately."

Section 5 of the bill requires law enforcement upon receiving a vehicle theft report or other reliable information that a hired motor vehicle has not be returned to report the failure to return to the National Criminal Information Computer. Law enforcement would also be required to report the recovery of those vehicles. Finally, law enforcement would also be required to attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the number is readily accessible.

EFFECTIVE DATE: This act is effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1392
PROPOSED COMMITTEE SUBSTITUTE H1392-PCS30327-SV-26

Short Title: Failure to Return Hired Motor Vehicles. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE A FELONY OFFENSE FOR FAILURE TO RETURN A HIRED MOTOR VEHICLE VALUED IN EXCESS OF FOUR THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-167 reads as rewritten:

"**§ 14-167. Failure to return hired property.**

Any person who shall rent or hire, any horse, mule or other like animal, or any buggy, wagon, truck, automobile, or other vehicle, aircraft, motor, trailer, appliance, equipment, tool, or other thing of value, and who shall willfully fail to return the same to the possession of the person, firm or corporation from whom such property has been rented or hired at the expiration of the time for which such property has been rented or hired, shall be guilty of a Class 2 misdemeanor.

If the value of the truck, automobile, or other motor vehicle that is not returned is in excess of four thousand dollars ($4,000), the person who rented or hired it and failed to return it shall be guilty of a Class H felony."

SECTION 2. G.S. 14-168.3 reads as rewritten:

"**§ 14-168.3. Prima facie evidence of intent to convert property.**

It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 with respect to any property other than a truck, automobile, or other motor vehicle when one who has, by written instrument, leased or rented the personal property of another:

(1) Failed or refused to return such property to its owner after the lease, bailment, or rental agreement has expired,

a. Within 10 days, and

b. Within 48 hours after written demand for return thereof is personally served or given by registered mail delivered to the

last known address provided in such lease or rental agreement, or

(2) When the leasing or rental of such personal property is obtained by presentation of identification to the lessor or rentor thereof which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification."

SECTION 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-168.5. Prima facie evidence of intent to convert a truck, automobile, or other motor vehicle; demand for return or payment.**

(a) Prima Facie Evidence. – It shall be prima facie evidence of intent to commit a crime as set forth in G.S. 14-167, 14-168, and 14-168.1 when one who has, by written instrument, leased or rented a truck, automobile, or other motor vehicle owned by another:

(1) Failed or refused to return the vehicle to the lessor or rentor at the place specified after the lease, bailment, or rental agreement has expired, within 72 hours after written demand for the vehicle is made in accordance with subsection (b) of this section; or

(2) When the leasing or rental of the vehicle is obtained by presentation of identification to the lessor or rentor of the vehicle which is false, fictitious, or knowingly not current as to name, address, place of employment, or other identification.

(b) Method of Demand; When Effective. –

(1) Demand for return of a leased or rented truck, automobile, or other motor vehicle may be made in one of three ways:

a. By personal service in accordance with Rule 4(j) of the North Carolina Rules of Civil Procedure.

b. By certified mail, return receipt requested, addressed to the last known address provided in the lease, bailment, or rental agreement.

c. By depositing the demand with a designated delivery service authorized pursuant to 26 U.S.C. § 7502(f)(2) addressed to the last known address provided in the lease, bailment, or rental agreement.

(2) Demand is effective upon hand delivery to the last known address, three days after deposit by mail (even if the demand is returned as undeliverable), or upon delivery by a designated delivery service to the last known address."

SECTION 4. G.S. 20-102 reads as rewritten:

"**§ 20-102. Report of stolen and recovered motor vehicles.**

Every sheriff, chief of police, or peace officer upon receiving reliable information that any vehicle registered hereunder has been stolen shall ~~immediately~~ report such theft to the Division. Any said officer upon receiving information that any vehicle, which he

has previously reported as stolen, has been recovered, shall ~~immediately~~ report the fact of such recovery to the Division."

SECTION 5. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-102.2. Report of failure to return hired motor vehicles.**

Every sheriff, chief of police, or peace officer, upon receiving a vehicle theft report, warrant, or other reliable information that any rental, for-hire, or leased vehicle registered pursuant to this Chapter has not been returned as set forth in G.S. 14-167, shall report the failure to the National Crime Information Center. Any officer upon receiving information concerning the recovery of a vehicle that the officer previously reported as not having been returned shall report the recovery to the National Crime Information Center. The officer shall also attempt to notify the reporting party of the location and condition of the recovered vehicle by telephone, if the telephone number of the reporting party is available or readily accessible."

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 661

Short Title:	Substantiation Appeal Process/Juv. Abuse/Neg.	(Public)
Sponsors:	Representatives Glazier, Alexander, Barnhart (Primary Sponsors); Farmer-Butterfield, Parmon, and Womble.	
Referred to:	Judiciary IV.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A SUBSTANTIATION APPEAL PROCESS FOR THOSE INDIVIDUALS ALLEGED TO BE RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE IN A SUBSTANTIATED REPORT UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Substantiated. – At the conclusion of an investigative assessment, the director has found substantial evidence that a juvenile is abused, neglected, or dependent.

(23) Unsubstantiated. – At the conclusion of an investigative assessment, the director has not found substantial evidence that a juvenile is abused, neglected, or dependent."

SECTION 2. G.S. 7B-302 is amended by adding the following new subsection to read:

"(g1) Within five working days after completing an investigative assessment, the director shall give written notice, by personal delivery or certified mail, return receipt requested, to the person identified in a substantiated case as the alleged individual responsible for rendering a juvenile abused or neglected. In the event the location of the alleged responsible individual is unknown, the notice shall be sent to the alleged

responsible individual's last known address. The notice shall provide all of the following:

(1) Inform the individual of the nature of the report and whether the director substantiated abuse or neglect or both.

(2) Summarize the substantial evidence underlying the director's determination without identifying the reporter or collateral contacts.

(3) Inform the individual that his name will be placed on the responsible individual list as provided in G.S. 7B-311, and of the potential effect the placement will have on his employment involving child care, applying to be a foster parent, or seeking to adopt a child.

(4) Clearly describe what action that individual must take to request an expunction of his name from the responsible individual list and the procedures the director must follow upon the receipt of the request."

SECTION 3. G.S. 7B-311 reads as rewritten:

"**§ 7B-311. Central registry.**

The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. A list of individuals responsible for rendering a juvenile abused or neglected in substantiated cases shall be maintained in order to exchange information with authorized requesters. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to policies adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law. The Social Services Commission may adopt reasonable and necessary rules pertaining to the operation of the central registry and responsible individual list to include the following:

(1) Procedures for filing data.

(2) Procedures for notifying an alleged responsible individual of a substantiated report.

(3) Procedures for correcting and expunging information.

(4) Releasing information from the responsible individual list to authorized requestors.

(5) Gathering statistical information.

(6) Keeping and maintaining information placed in the registry and on the responsible individual list."

SECTION 4. Article 3 of Subchapter I of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-312. Requests for expunction, review, and appeal.**

(a) Any person who has been identified as the alleged responsible individual in a substantiated report of abuse or neglect resulting from an investigative assessment may, within 15 working days after receipt of notice pursuant to G.S. 7B-302(g1), request the

director who rendered the substantiation to expunge the alleged responsible individual's name from the responsible individual list on the grounds that the substantiation of abuse or neglect is not supported by substantial evidence in the records, reports, or other case documentation of the local department of social services. The request for expunction shall be in writing and addressed to the director who rendered the substantiation and must be delivered in person or posted in the United States mail within 15 days after receipt of the notice.

(b) After receipt of the individual's timely request for expunction from the responsible individual list, the director who rendered the substantiation shall, within 15 working days after receipt of the individual's request, review all records, reports, and other case documentation pertaining to the substantiation. The director shall determine whether there is substantial evidence to support the substantiation and proceed as follows:

(1) If the director determines that there is not substantial evidence in the records, reports, or other case documentation of the local department of social services to support a substantiation of either abuse or neglect, the director shall contact the Department of Health and Human Services to expunge the individual's name from the responsible individual list and prepare and send the individual seeking the expunction, by personal delivery or certified mail, a written statement of the director's decision.

(2) If the director determines that there is substantial evidence in the records, reports, or other case documentation of the local department of social services to support a substantiation of abuse or neglect, the director may uphold or modify the earlier decision of the local department of social services accordingly and shall prepare and send the individual seeking the expunction, by personal delivery or certified mail, a written statement of the director's decision with a second notice pursuant to G.S. 7B-302(g1). If the director modifies the earlier decision of the local department of social services, the director shall contact the Department of Health and Human Services to change the earlier substantiation to appropriately reflect the director's decision. If the director upholds or modifies an earlier decision of the local department of social services, the alleged responsible individual may, within 15 working days after receipt of the second notice, request a judicial hearing. The request for judicial hearing shall be in writing and addressed to the director of the local department of social services who rendered the decision and must be delivered in person or posted in the United States mail within 15 working days after receipt of the second notice. Upon receipt of a timely request, the director who rendered the decision shall file and serve a juvenile petition upon the alleged responsible individual, except when there has been a reciprocal investigative assessment due to a conflict of interest, then the director who rendered the decision shall contact the director of the department

of social services in the county where the alleged responsible individual resides, and that county shall file and serve the juvenile petition upon the alleged responsible person. The hearing on the juvenile petition shall proceed in accordance with the provisions of Subchapter I of Chapter 7B of the General Statutes.

(c) Any individual alleged to be responsible for rendering a juvenile abused or neglected as the result of an investigative assessment who fails to make a timely request for expunction of his or her name from the responsible individual list after being given an opportunity to do so or fails to keep the local department of social services apprised of his or her location to receive notification of the director's decision shall no longer be entitled to challenge the placement of his or her name on the responsible individual list. If, before or during any proceeding provided in this section, a juvenile court case results from the same substantiation, the director shall delay any further proceedings for the expunction of the individual's name from the responsible individual list until the juvenile court case concludes or is dismissed. If a juvenile court case resulting from the same substantiation is dismissed or concludes without an adjudication of abuse or neglect or with an adjudication that differs from the earlier substantiation, the director who rendered the substantiation shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individual list or modify the earlier decision of the local department of social services accordingly."

SECTION 5. This act becomes effective October 1, 2005, and applies to actions or petitions filed on or after that date.

HOUSE BILL 661:
Substantiation Appeal Process/Juv. Abuse/Neg

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 19, 2005
Introduced by:	Reps. Glazier, Alexander, Barnhart	**Summary by:**	Steven Rose
Version:	PCS H661-CSRL-27		Committee Counsel

SUMMARY: ***HB 661 authorizes the Department of Health and Human Services (DHHS) to maintain a list of individuals who have been identified by county departments of social services as responsible in cases of abuse or neglect of juveniles. It also contains a procedure for individuals to expunge their names from that list if they are not responsible individuals.***

BILL ANALYSIS:

Section 1- Adds definitions of "responsible individual," substantial evidence," and "working day."

Section 2- Adds proceedings for expunction from the responsible individuals list to the jurisdiction of the district court.

Section 3- Provides for notification by the director of the county social services department to an individual who has been identified as a responsible individual in an abuse or neglect case. Notification must include a summary of the evidence, information that the person has been placed on the responsible individuals list, the effect this might have on employment involving child care and applying as a foster parent or to adopt, and the actions the person must take to seek expunction from the list.

Section 4- Contains the procedures for seeking expunction from the list. The individual has 15 days to request a review and expunction by the director of the county department of social services. The director has 15 days to review the case, determine if there is substantial evidence to support the findings, and respond. If the director finds there is not substantial evidence, he or she must inform the individual and notify DHHS to expunge the individual's name from the list. If the director finds there is substantial evidence to support the decision that there was abuse or neglect and that the individual was responsible, the director must notify the individual. Notification includes the reasons for upholding the determination, a statement that it is a final decision, and the time by which the individual must request review by the district court. The notification must include the information enclosed in the original notification and a copy of the form to be used in petitioning the district court. The individual has 15 working days from receipt of the director's decision to file a petition for expunction with the district court or the right to do so is waived.

At the district court hearing, the burden of proof is on the director and the correctness of the director's decision must be shown by a preponderance of the evidence (a higher standard than that used administratively by the director). The rules of evidence for civil cases are followed, but the court may deviate from them if justice requires it. There is no jury trial permitted. Appeals from the district court are to the Court of Appeals.

A challenge to placement on the list may not be made if the individual is criminally convicted in a case arising from the same incident, the individual is a respondent in a proceeding regarding abuse or neglect from the same incident, timely requests for expunction to the director or the court are not made, or the individual fails to keep the county department informed of his or her current address so that he or she may receive notice of the director's decision.

Expunction proceedings are stayed if the individual is named as a respondent in a juvenile case resulting from the same incident. If the case is dismissed or concluded without a finding of abuse or neglect, or with a finding that differs from the director's original finding, the director shall notify DHHS to remove the person's name or modify the entry on the list accordingly.

EFFECTIVE DATE: The act is effective October 1, 2005 and applies to abuse or neglect reports received on or after that date.

H0661e1-SMRL

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 661 DATE 5/19/05

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

COMMITTEE SUBSTITUTE ✓

Rep.) Justus
Sen.)

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

2 (X) WHICH CHANGES THE TITLE

3 by deleting the phrase "ALLEGED TO BE"

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SIGNED Carolyn Justus

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 661 DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) _____

Sen.)

moves to amend the bill on page 4, line 30

( ) WHICH CHANGES THE TITLE

by deleting "G.S. 7B-302(g1)"

and substituting "subsection (b) of this section";

and on Pg 7 line 37 by deleting "individual" and substituting "individuals".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 661 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
) _____
Sen.)

moves to amend the bill on page 2, line 28-30

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

~~"responsible individual" if the~~

"written notice to the ~~and~~ responsible individual by personal delivery to that person. If the responsible individual cannot be served by personal delivery, then the written notice shall be delivered to that person by certified mail, return receipt requested. If the written notice cannot be delivered by personal delivery or certified mail, written notice shall be made by publication under G.S. 1A-1, Rule 4(j1). The notice"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

4

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Daughtry
(Sen.)

moves to amend the bill on page 2, line ~~5 28-30~~

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read: personal delivery or by

"written notice by delivering a copy of the notice to an agent authorized by appointment or by law to be served or to accept service of process or by serving process upon such agent or the party in a manner specified by any statute

~~and on~~ pg. 3, line 33; pg. 3, line 39; pg. 4, line 29, and pg. 4, line 34 ~~a~~ by deleting "15" and substituting "30".

delete "working" before "days"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

no vote taken
bill displaced to 5/24 mtg.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 661
PROPOSED COMMITTEE SUBSTITUTE H661-CSRL-27 [v.3]

5/18/2005 7:39:25 PM

Short Title: Substantiation Appeal Process/Juv. Abuse/Neg. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A LIST OF INDIVIDUALS ALLEGED TO BE RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY AND ESTABLISHING A PROCESS FOR EXPUNCTION FROM THAT LIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(18a) Responsible individual. – The individual identified by the director as the person responsible for rendering a juvenile abused or neglected.

...

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. – Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions."

SECTION 2. G.S. 7B-200(a) reads as rewritten:

"**§ 7B-200. Jurisdiction.**

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

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

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

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

(3) Proceedings to determine whether a juvenile should be ~~emancipated;~~emancipated.

(4) Proceedings to terminate parental ~~rights;~~rights.

(5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social ~~services;~~services.

(6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by ~~G.S. 7B-302;~~G.S. 7B-302.

(7) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General ~~Statutes; and~~Statutes.

(8) Proceedings by an underage party seeking judicial authorization to marry, pursuant to Article 1 of Chapter 51 of the General Statutes.

(9) Proceedings for the expunction of an individual's name from the responsible individuals list pursuant to G.S. 7B-312."

SECTION 3. G.S. 7B-302 reads as rewritten:

"**§ 7B-302. Investigation by director; access to confidential information; notification of person making the ~~report.~~ report; notification to individual responsible for abuse or neglect.**

...

(g1) Within five working days after completion of an investigative assessment response that results in a determination of abuse or neglect, the director shall give written notice, by personal delivery or by certified mail, return receipt requested, to the responsible individual. If the individual entitled to notice cannot be found by diligent effort, notice shall be made by publication under G.S. 1A-1, Rule 4 (j1). The notice shall:

(1) Inform the individual of the nature of the report and whether the director determined abuse or neglect or both.

(2) Summarize the substantial evidence underlying the director's determination without identifying the reporter or collateral contacts.

(3) Inform the individual that his name has been placed on the responsible individual list as provided in G.S. 7B-311, and the effect the listing could have on the individual's employment involving child care, applying to be a foster parent, or seeking to adopt a child.

(4) Describe clearly what actions the individual must take to request expunction by the director of the individual's name from the responsible individual list and procedures for seeking judicial review of the director's decision not to remove the individual's name from the list.

...."

SECTION 4. G.S. 7B-311 reads as rewritten:

"**§ 7B-311. Central registry.**

The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. The Department of Health and Human Services shall also maintain a list of responsible individuals identified by county directors of social services. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, except as specifically provided otherwise by statute or by rules ~~subject to policies~~ adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law. The Social Services Commission may adopt rules pertaining to the operation of the central registry and responsible individuals list, including the following:

(1) Procedures for filing data.

(2) Procedures for notifying a responsible individual of a determination of abuse or neglect.

(3) Procedures for correcting and expunging information.

(4) Determining persons who are authorized to receive information from the responsible individuals list.

(5) Releasing information from the responsible individuals list to authorized requestors.

(6) Gathering statistical information.

(7) Keeping and maintaining information placed in the registry and on the responsible individuals list."

SECTION 5. Article 3 of Subchapter I of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-312. Requests for expunction, review, and appeal.**

(a) Any individual who has been identified as a responsible individual in an abuse or neglect case may, within 15 working days after receipt of notice pursuant to G.S. 7B-302(g1), request the director who determined the abuse or neglect and identified the individual as a responsible individual to expunge the individual's name from the responsible individuals list. The request for expunction shall be in writing, addressed to the director who determined the abuse or neglect and identified the individual as a responsible individual, and delivered in person or by certified mail, return receipt requested, within 15 working days after receipt of notice.

(b) After receipt of a timely request for the expunction of an individual's name from the responsible individuals list, the director shall, within 15 working days, review all records, reports and other case documentation pertaining to the determination. The director shall determine whether there is substantial evidence to support the

determination and the placement of the individual's name on the responsible individuals list, and proceed as follows:

(1) If the director decides that there is not substantial evidence in the records, reports or other case documentation of the county department of social services to support a determination of abuse or neglect and to support the identification of the individual as a responsible individual, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list, and prepare and send the individual seeking expunction, by personal delivery or first class mail, a written statement of the director's decision.

(2) If the director decides that there is substantial evidence in the records, reports or other case documentation of the county department of social services to support a determination of abuse or neglect and to support the identification of the individual as a responsible individual, the director may uphold or modify the director's prior decision accordingly and shall prepare and send the individual seeking expunction, by personal delivery or first class mail, a written statement of the director's decision, the reasons for the decision, a clear statement that it is a final decision, and the time by which the individual must file a petition for expunction with the district court. The director shall also include a second notice containing the information required by G.S. 7B-302(g1) and a copy of a petition for expunction form. If the director modifies the prior decision, the director shall notify the Department of Health and Human Services which shall change its records accordingly.

(c) If on review the director determines that there is substantial evidence to support a determination of abuse or neglect and to support the identification of the individual as a responsible individual, the individual seeking expunction may, within 15 working days after receipt of notice pursuant to G.S. 7B-302(g1), request a review of the director's decision by the district court of the county in which the abuse or neglect report arose. If the director fails to act on the request for expunction within 30 working days after its receipt, this failure will function as a refusal to expunge the individual's name, and the individual seeking expunction may, within 15 working days thereafter, request a review of the director's decision not to expunge the individual's name by the district court of the county in which the abuse or neglect report arose. The request shall be by a petition for expunction filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director. The petition for expunction shall contain the name, date of birth, and address of the individual seeking expunction, the name of the juvenile who was the subject of the determination of abuse or neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for expunction constitutes a waiver of the individual's right to file a petition for expunction and to a district court hearing.

(d) The clerk of court shall maintain a separate docket for such expunction actions and upon receipt of a filed petition for expunction shall calendar the matter for hearing at a session of district court hearing juvenile matters and send notice of the hearing to the petitioner and the director. Upon the request of a party, the court may close the hearing to all persons, except officers of the court, the parties and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the correctness of the director's decision determining abuse or neglect and identifying the individual seeking expunction as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court shall have discretion to permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence will be served and the interests of justice will best be served by its admission. At the hearing, the following rights of the parties shall be preserved:

(1) The right to present sworn evidence, law or rules that bear upon the case.

(2) The right to represent themselves or obtain the services of an attorney at their own expense.

(3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(e) After the hearing, the court shall enter a written order containing findings of fact and conclusions of law. The order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. A copy of the order shall be served on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence the correctness of the determination of abuse or neglect or the identification of the responsible individual, the court shall reverse the director's decision and order the director to notify the Department of Health and Human Services to expunge the individual's name from the responsible individual list. If the court concludes that sufficient evidence has not been presented to support a determination of abuse, but there is sufficient evidence to support a determination of neglect and the identification of the individual seeking expunction as a responsible individual, the court shall modify the director's decision and order the director to notify the Department of Health and Human Services to change the entry on the responsible individual list to that of neglect. Any appeal shall be in accordance with G.S. 7A-27(c).

(f) Any individual who has been identified as a responsible individual in an abuse or neglect case shall no longer be entitled to challenge the placement of the individual's name on the responsible individual list pursuant to this section if:

(1) That individual is criminally convicted as a result of the same incident.

(2) That individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same incident.

(3) That individual fails to make a timely request to the director who made the determination of abuse or neglect and identified the individual as a

responsible individual for the expunction of the individual's name from the responsible individual list.

(4) That individual fails to file a petition for expunction in a timely manner.

(5) That individual fails to keep the county department of social services informed of his current address throughout an investigative assessment response and any request for expunction so that the individual may receive notification of the director's decisions.

If prior to or during any proceeding provided for in this section, an individual seeking expunction is named as a respondent in a juvenile court case resulting from the same incident, the director, the district court judge, or the Court of Appeals shall stay any further proceedings for the expunction of that individual's name from the responsible individual list until the juvenile court case is concluded or dismissed. If a juvenile court case resulting from the same determination of abuse or neglect is dismissed, or concludes without an adjudication of abuse or neglect, or with an adjudication that differs from the prior determination, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individual list or modify the prior decision of the director accordingly."

SECTION 6. This act becomes effective October 1, 2005, and applies to abuse or neglect reports received by county departments of social services on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1504

Short Title:	Law Enforcement Officer Discipline.	(Public)
Sponsors:	Representative Martin.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW OF DISCIPLINARY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 17F.**

"**Investigation and Discipline of Law Enforcement Officers.**

"**§ 17F-1. Definitions.**

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) 'Officer' means law enforcement officer.

"**§ 17F-2. Discharge, suspension, or demotion for just cause only.**

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"**§ 17F-3. Minimum procedures.**

If an employing agency considers matters that could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of, or any disciplinary action against, a law enforcement officer, each employing agency shall establish minimum procedures to ensure that any officer is afforded due process of law prior to the imposition of any disciplinary action against the officer. These procedures shall include, as a minimum, the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the officer's expense, the right to examine

any witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

"**§ 17F-4. Certain established procedures validated.**

Employing agencies using an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards set forth in G.S. 17F-3 or otherwise provides due process need not develop the procedures required by G.S. 17F-3 so long as the established system remains in place.

"**§ 17F-5. Permissible suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be a substantial and immediate threat to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In such a case, the officer shall be afforded the rights provided for in G.S. 17F-3, except that an officer's request to be heard by a complaint review board shall be made subsequent to the imposition of the suspension."

SECTION 2. This act becomes effective October 1, 2005, and applies to investigations and disciplinary proceedings commenced on or after that date.

HOUSE BILL 1504:
Law Enforcement Officer Discipline

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 19, 2005
Introduced by:	Rep. Martin	**Summary by:**	Trina Griffin
Version:	PCS to First Edition		Committee Counsel
	H1504-PCS70472-LL-11		

SUMMARY: House Bill 1504 would provide that law enforcement officers may only be discharged, suspended, or demoted for just cause and require employing agencies to establish minimum due process procedures prior to such adverse employment decisions, including the right to a hearing, the right to be represented by counsel, the right to examine witnesses and present evidence, and the right to have all meetings recorded.

The Proposed Committee Substitute deletes the words "or any disciplinary action against" on page 1, lines 24-25.

CURRENT LAW: Generally speaking, law enforcement officers are at-will employees who may be terminated within the discretion of the officer's employer. Despite this at-will status, local governments have the authority to establish personnel policies and internal grievance procedures that may offer certain due process protections for all municipal or county employees. Moreover, there are numerous federal and State statutory and common law exceptions to the at-will doctrine.

In North Carolina, career State employees subject to the State Personnel Act, which would include State law enforcement officers, may not be discharged, suspended, or demoted for disciplinary reasons, except for just cause. The statutes require notice to the employee prior to any disciplinary action and provide procedures for filing a grievance, filing a contested case with the Office of Administrative Hearings, and appeal procedures.

BILL ANALYSIS:

Applicability. – The bill would apply to all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C (NC Criminal Justice Education and Training Standards Commission) and 17E (NC Sheriffs' Education and Training Standards Commission) of the General Statutes. This would include municipal police officers as well as sheriffs. Law enforcement officers that are career State employees subject to the State Personnel Act, such as highway patrolmen, certain campus police officers, probation officers, are already granted certain employment protections under current law but would meet the definition of "law enforcement officer" under this bill.

Just Cause. – The bill would provide that no law enforcement officer may be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

Due Process Procedures. – The bill would require employing agencies to establish minimum procedures to ensure that officers are afforded due process prior to dismissal, demotion, suspension or transfer for punitive reasons. These procedures must include:

- The right to have hearing before a fair and impartial board or hearing officer.
- The right to be represented at the officer's expense.
- The right to call and examine witnesses and to present evidence.
- The right to have all meetings recorded.

Certain Procedures Validated. – If an employing agency uses an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards required under this bill, then the employing agency is not required to develop additional procedures.

Permissible Suspensions. – Under the bill, an employing agency would retain authority to suspend an officer immediately, with pay, if the officer's continued presence constitutes a substantial and immediate threat to the welfare of the agency or the public, or if the officer refuses to obey a direct order issued in accordance with the agency's written and disseminated rules and regulations. The suspended officer would still be entitled to the minimum due process procedures subsequent to the suspension.

EFFECTIVE DATE: This act becomes effective October 1, 2005, and applies to investigations and disciplinary proceedings commenced on or after that date.

BACKGROUND: At-will employment is a common law doctrine providing that absent the existence of a contract which specifically provides for the duration or termination of employment, employment is terminable at the will of either party irrespective of the quality of performance by the other party.

The employment-at-will rule has been the law in each of the United States, including North Carolina, since the last half of the 19th century. During the time of the rule's inception, courts viewed the relationship between employer and employee as being on equal footing in terms of bargaining power. During the first half of the 20th century, courts and legislatures slowly began to recognize that employers frequently have structural and economic advantages when negotiating with potential or current employees. Moreover, the recognition that employees were often in a position of being unable to protect their livelihood from unjust termination resulted in the development of numerous exceptions to the employment-at-will doctrine.

First, there are several statutory exceptions, which include restrictions by both Congress and the General Assembly. Federal statutes that modify the at-will employment rule include the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Generally, these acts prohibit an employer from making adverse employment decisions on the basis of discriminatory reasons. The North Carolina General Statutes modify the at-will employment rule in several ways as well. For example, an employer may not fire an employee for serving in the military, participating in certain administrative or judicial proceedings, or filing an action or investigation against the employer under the Worker's Compensation Act, the Occupational Safety and Health Act, the Wage and Hour Act, or the Mine Safety and Health Act. In addition to statutory exceptions, there are judicially created exceptions to the at-will employment rule, such as the tort of wrongful discharge when the employer's motive in dismissing an employee violates public policy. An example of this would be when an employer terminates an employee after attempting to coerce the employee into violating a statute or regulation.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1504
PROPOSED COMMITTEE SUBSTITUTE H1504-PCS70472-LL-11

Short Title: Law Enforcement Officer Discipline. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW OF DISCIPLINARY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 17F.**

"**Investigation and Discipline of Law Enforcement Officers.**

"**§ 17F-1. Definitions.**

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) 'Officer' means law enforcement officer.

"**§ 17F-2. Discharge, suspension, or demotion for just cause only.**

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"**§ 17F-3. Minimum procedures.**

If an employing agency considers matters that could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of a law enforcement officer, each employing agency shall establish minimum procedures to ensure that any officer is afforded due process of law prior to the imposition of the disciplinary action against the officer. These procedures shall include, as a minimum, the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the

officer's expense, the right to examine any witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

"**§ 17F-4. Certain established procedures validated.**

Employing agencies using an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards set forth in G.S. 17F-3 or otherwise provides due process need not develop the procedures required by G.S. 17F-3 so long as the established system remains in place.

"**§ 17F-5. Permissible suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be a substantial and immediate threat to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In such a case, the officer shall be afforded the rights provided for in G.S. 17F-3, except that an officer's request to be heard by a complaint review board shall be made subsequent to the imposition of the suspension."

SECTION 2. This act becomes effective October 1, 2005, and applies to investigations and disciplinary proceedings commenced on or after that date.

House Pages

JUDICIARY IV

Name Of Committee: _____ Date: MAY 19, 2005

(3)

1. Name: Elijah Lackey
   County: Catawba
   Sponsor: Rep. Mark Hilton
2. Name: Graham Langdon
   County: Johnston
   Sponsor: Rep. Langdon
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED HINES
2. Name: BRAD BAREFOOT
3. Name: _____
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennings Gaforth	Enterprise Rent-a-Car
Cam Greer	BPMHL
Jami Fitzgerald	NCFPC
Jane Smith	NCDSS
Sherry Bradsher	DHHS | DSS
Rob Lallier	DHHS
Dana Martin	NC Sheriffs
Eddie Caldwell	NC Sheriffs Assn.
Colleen Kochanek	NC Assn. of Chiefs of Police
Lorin Mueller	NC Coalition of Police
Brian Lewis	Covenant w NC's Children

VISITOR REGISTRATION SHEET

JUDICIARY IV — May 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mike Lord	Maupin Taylor
Justin Guthrie	PBA
Randy Byrd	PBA
Randy Miller	PBA
AL DEITCH	DOA/YAID
JoAnn Lamm	DHHS/DSS
Chris Sinha	DHHS/DSS/NCAG
Andy Miller	PBA
JOHN C. MIDGETTE	PBA.
J Michael McGuinness	Lawyer
Angie Harris	Maupin Taylor

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, May 24, 2005

The House Committee on Judiciary IV met on Tuesday, May 24, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. Representative Weiss asked that Representative Kiser be remembered; his absence today is due to the death of his mother yesterday. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

Representative Glazier moved to adopt the Proposed Committee Substitute for HB 661 – SUBSTANTIATION APPEAL PROCESS/JUV. ABUSE/NEG. for discussion purposes. The motion was adopted. This bill was heard at the May 19th meeting, amendments were made and the bill was displaced. Representative Glazier spoke on the bill calling attention to the changes in the bill and the amendments that were rolled into the Proposed Committee Substitute. Discussion followed with Ms. JoAnn Lamm, Department of Health and Human Services, answering questions. Representative Glazier moved to give a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. The motion was adopted.

Representative Ray, sponsor of House Bill 1514, RECKLESS ENDANGERMENT, asked that the bill be removed from the agenda.

Vice-Chair Glazier presided and introduced Representative Weiss, sponsor, to speak on HB 1176, PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS. With House Committee Substitute #2 before the committee, Representative Daughtry recused himself under Rule 26. Representative Weiss spoke on the bill and spoke on a proposed amendment. Representative Martin moved to adopt the amendment. The motion carried. Discussion followed. Mr. Lew Starling, an attorney from Smithfield, spoke in opposition to the bill. Mr. Bill Brewer, a bankruptcy attorney representing the NC Bar Association, spoke in support of the bill. Representative Parmon moved to roll the amendment into a new Proposed Committee Substitute and to give a favorable report to the Proposed Committee Substitute as amended; unfavorable to the original bill. The motion was adopted.

There being no further business, the meeting was adjourned at 10:45 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; HB 661: Committee Report, Bill, Bill Analysis, Committee Substitute; HB 1514; HB 1176: Committee Report, House Committee Substitute #2, Amendment, Committee Substitute #3; Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 24, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS:

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 661 – SUBSTANTIATION APPEAL PROCESS/JUV. ABUSE/NEG.
Representatives Glazier, Alexander and Barnhart

HB 1514 – RECKLESS ENDANGERMENT.
Representative Ray

HB 1176 – PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.
Representatives Weiss, Glazier, Goodwin and Harrison

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☐ Committee Substitute for

HB 661 A BILL TO BE ENTITLED AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A SUBSTANTIATION APPEAL PROCESS FOR THOSE INDIVIDUALS ALLEGED TO BE RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE IN A SUBSTANTIATED REPORT UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 661

Short Title:	Substantiation Appeal Process/Juv. Abuse/Neg.	(Public)
Sponsors:	Representatives Glazier, Alexander, Barnhart (Primary Sponsors); Farmer-Butterfield, Parmon, and Womble.	
Referred to:	Judiciary IV.	

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A SUBSTANTIATION APPEAL PROCESS FOR THOSE INDIVIDUALS ALLEGED TO BE RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE IN A SUBSTANTIATED REPORT UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Substantiated. – At the conclusion of an investigative assessment, the director has found substantial evidence that a juvenile is abused, neglected, or dependent.

(23) Unsubstantiated. – At the conclusion of an investigative assessment, the director has not found substantial evidence that a juvenile is abused, neglected, or dependent."

SECTION 2. G.S. 7B-302 is amended by adding the following new subsection to read:

"(g1) Within five working days after completing an investigative assessment, the director shall give written notice, by personal delivery or certified mail, return receipt requested, to the person identified in a substantiated case as the alleged individual responsible for rendering a juvenile abused or neglected. In the event the location of the alleged responsible individual is unknown, the notice shall be sent to the alleged

responsible individual's last known address. The notice shall provide all of the following:

(1) Inform the individual of the nature of the report and whether the director substantiated abuse or neglect or both.

(2) Summarize the substantial evidence underlying the director's determination without identifying the reporter or collateral contacts.

(3) Inform the individual that his name will be placed on the responsible individual list as provided in G.S. 7B-311, and of the potential effect the placement will have on his employment involving child care, applying to be a foster parent, or seeking to adopt a child.

(4) Clearly describe what action that individual must take to request an expunction of his name from the responsible individual list and the procedures the director must follow upon the receipt of the request."

SECTION 3. G.S. 7B-311 reads as rewritten:

"**§ 7B-311. Central registry.**

The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. A list of individuals responsible for rendering a juvenile abused or neglected in substantiated cases shall be maintained in order to exchange information with authorized requesters. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, subject to policies adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law. The Social Services Commission may adopt reasonable and necessary rules pertaining to the operation of the central registry and responsible individual list to include the following:

(1) Procedures for filing data.

(2) Procedures for notifying an alleged responsible individual of a substantiated report.

(3) Procedures for correcting and expunging information.

(4) Releasing information from the responsible individual list to authorized requestors.

(5) Gathering statistical information.

(6) Keeping and maintaining information placed in the registry and on the responsible individual list."

SECTION 4. Article 3 of Subchapter I of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-312. Requests for expunction, review, and appeal.**

(a) Any person who has been identified as the alleged responsible individual in a substantiated report of abuse or neglect resulting from an investigative assessment may, within 15 working days after receipt of notice pursuant to G.S. 7B-302(g1), request the

director who rendered the substantiation to expunge the alleged responsible individual's name from the responsible individual list on the grounds that the substantiation of abuse or neglect is not supported by substantial evidence in the records, reports, or other case documentation of the local department of social services. The request for expunction shall be in writing and addressed to the director who rendered the substantiation and must be delivered in person or posted in the United States mail within 15 days after receipt of the notice.

(b) After receipt of the individual's timely request for expunction from the responsible individual list, the director who rendered the substantiation shall, within 15 working days after receipt of the individual's request, review all records, reports, and other case documentation pertaining to the substantiation. The director shall determine whether there is substantial evidence to support the substantiation and proceed as follows:

(1) If the director determines that there is not substantial evidence in the records, reports, or other case documentation of the local department of social services to support a substantiation of either abuse or neglect, the director shall contact the Department of Health and Human Services to expunge the individual's name from the responsible individual list and prepare and send the individual seeking the expunction, by personal delivery or certified mail, a written statement of the director's decision.

(2) If the director determines that there is substantial evidence in the records, reports, or other case documentation of the local department of social services to support a substantiation of abuse or neglect, the director may uphold or modify the earlier decision of the local department of social services accordingly and shall prepare and send the individual seeking the expunction, by personal delivery or certified mail, a written statement of the director's decision with a second notice pursuant to G.S. 7B-302(g1). If the director modifies the earlier decision of the local department of social services, the director shall contact the Department of Health and Human Services to change the earlier substantiation to appropriately reflect the director's decision. If the director upholds or modifies an earlier decision of the local department of social services, the alleged responsible individual may, within 15 working days after receipt of the second notice, request a judicial hearing. The request for judicial hearing shall be in writing and addressed to the director of the local department of social services who rendered the decision and must be delivered in person or posted in the United States mail within 15 working days after receipt of the second notice. Upon receipt of a timely request, the director who rendered the decision shall file and serve a juvenile petition upon the alleged responsible individual, except when there has been a reciprocal investigative assessment due to a conflict of interest, then the director who rendered the decision shall contact the director of the department

of social services in the county where the alleged responsible individual resides, and that county shall file and serve the juvenile petition upon the alleged responsible person. The hearing on the juvenile petition shall proceed in accordance with the provisions of Subchapter I of Chapter 7B of the General Statutes.

(c) Any individual alleged to be responsible for rendering a juvenile abused or neglected as the result of an investigative assessment who fails to make a timely request for expunction of his or her name from the responsible individual list after being given an opportunity to do so or fails to keep the local department of social services apprised of his or her location to receive notification of the director's decision shall no longer be entitled to challenge the placement of his or her name on the responsible individual list. If, before or during any proceeding provided in this section, a juvenile court case results from the same substantiation, the director shall delay any further proceedings for the expunction of the individual's name from the responsible individual list until the juvenile court case concludes or is dismissed. If a juvenile court case resulting from the same substantiation is dismissed or concludes without an adjudication of abuse or neglect or with an adjudication that differs from the earlier substantiation, the director who rendered the substantiation shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individual list or modify the earlier decision of the local department of social services accordingly."

SECTION 5. This act becomes effective October 1, 2005, and applies to actions or petitions filed on or after that date.

HOUSE BILL 661:
Substantiation Appeal Process/Juv. Abuse/Neg

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 19, 2005
Introduced by:	Reps. Glazier, Alexander, Barnhart	**Summary by:**	Steven Rose
Version:	PCS H661-CSRL-27		Committee Counsel

SUMMARY: HB 661 authorizes the Department of Health and Human Services (DHHS) to maintain a list of individuals who have been identified by county departments of social services as responsible in cases of abuse or neglect of juveniles. It also contains a procedure for individuals to expunge their names from that list if they are not responsible individuals.

BILL ANALYSIS:

Section 1- Adds definitions of "responsible individual," substantial evidence," and "working day."

Section 2- Adds proceedings for expunction from the responsible individuals list to the jurisdiction of the district court.

Section 3- Provides for notification by the director of the county social services department to an individual who has been identified as a responsible individual in an abuse or neglect case. Notification must include a summary of the evidence, information that the person has been placed on the responsible individuals list, the effect this might have on employment involving child care and applying as a foster parent or to adopt, and the actions the person must take to seek expunction from the list.

Section 4- Contains the procedures for seeking expunction from the list. The individual has 15 days to request a review and expunction by the director of the county department of social services. The director has 15 days to review the case, determine if there is substantial evidence to support the findings, and respond. If the director finds there is not substantial evidence, he or she must inform the individual and notify DHHS to expunge the individual's name from the list. If the director finds there is substantial evidence to support the decision that there was abuse or neglect and that the individual was responsible, the director must notify the individual. Notification includes the reasons for upholding the determination, a statement that it is a final decision, and the time by which the individual must request review by the district court. The notification must include the information enclosed in the original notification and a copy of the form to be used in petitioning the district court. The individual has 15 working days from receipt of the director's decision to file a petition for expunction with the district court or the right to do so is waived.

At the district court hearing, the burden of proof is on the director and the correctness of the director's decision must be shown by a preponderance of the evidence (a higher standard than that used administratively by the director). The rules of evidence for civil cases are followed, but the court may deviate from them if justice requires it. There is no jury trial permitted. Appeals from the district court are to the Court of Appeals.

A challenge to placement on the list may not be made if the individual is criminally convicted in a case arising from the same incident, the individual is a respondent in a proceeding regarding abuse or neglect from the same incident, timely requests for expunction to the director or the court are not made, or the individual fails to keep the county department informed of his or her current address so that he or she may receive notice of the director's decision.

Expunction proceedings are stayed if the individual is named as a respondent in a juvenile case resulting from the same incident. If the case is dismissed or concluded without a finding of abuse or neglect, or with a finding that differs from the director's original finding, the director shall notify DHHS to remove the person's name or modify the entry on the list accordingly.

EFFECTIVE DATE: The act is effective October 1, 2005 and applies to abuse or neglect reports received on or after that date.

H0661e1-SMRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 661
PROPOSED COMMITTEE SUBSTITUTE H661-PCS50437-RL-29

Short Title: Substantiation Appeal Process/Juv. Abuse/Neg. (Public)

Sponsors:

Referred to:

March 16, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO ESTABLISH A LIST OF INDIVIDUALS RESPONSIBLE FOR ABUSE OR NEGLECT OF A JUVENILE UNDER THE LAWS REGULATING JUVENILE ABUSE, NEGLECT, AND DEPENDENCY AND ESTABLISHING A PROCESS FOR EXPUNCTION FROM THAT LIST.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-101 is amended by adding the following new subdivisions to read:

"**§ 7B-101. Definitions.**

As used in this Subchapter, unless the context clearly requires otherwise, the following words have the listed meanings:

...

(18a) Responsible individual. – The individual identified by the director as the person responsible for rendering a juvenile abused or neglected.

...

(21) Substantial evidence. – Relevant evidence a reasonable mind would accept as adequate to support a conclusion.

(22) Working day. – Any day other than a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions."

SECTION 2. G.S. 7B-200(a) reads as rewritten:

"**§ 7B-200. Jurisdiction.**

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

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

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

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

(3) Proceedings to determine whether a juvenile should be ~~emancipated;~~emancipated.

(4) Proceedings to terminate parental ~~rights;~~rights.

(5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social ~~services;~~services.

(6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by ~~G.S. 7B-302;~~G.S. 7B-302.

(7) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General ~~Statutes; and~~Statutes.

(8) Proceedings by an underage party seeking judicial authorization to marry, pursuant to Article 1 of Chapter 51 of the General Statutes.

(9) Proceedings for the expunction of an individual's name from the responsible individuals list pursuant to G.S. 7B-312."

SECTION 3. G.S. 7B-302 reads as rewritten:

"**§ 7B-302. Investigation by director; access to confidential information; notification of person making the ~~report.~~ report; notification to individual responsible for abuse or neglect.**

...

(g1) Within five working days after completion of an investigative assessment response that results in a determination of abuse or neglect, the director shall give written notice to the responsible individual by delivering the notice to the sheriff of the county in which the responsible individual is believed to be located for service upon the individual. Service may only be made upon the individual. If the individual entitled to notice cannot be served by the sheriff, then the written notice shall be delivered to the responsible individual by certified mail, return receipt requested. Certified mail notice may only be received by the responsible individual. If, after diligent effort, written notice cannot be served upon the individual by the sheriff or by certified mail, notice shall be made by publication under G.S. 1A-1, Rule 4 (j1). The notice shall:

(1) Inform the individual of the nature of the report and whether the director determined abuse or neglect or both.

(2) Summarize the substantial evidence underlying the director's determination without identifying the reporter or collateral contacts.

(3) Inform the individual that his name has been placed on the responsible individuals list as provided in G.S. 7B-311, and the effect the listing could have on the individual's employment involving child care, applying to be a foster parent, or seeking to adopt a child.

(4) Describe clearly what actions the individual must take to request expunction by the director of the individual's name from the responsible individual list and procedures for seeking judicial review of the director's decision not to remove the individual's name from the list.

...."

SECTION 4. G.S. 7B-311 reads as rewritten:

"**§ 7B-311. Central registry.**

The Department of Health and Human Services shall maintain a central registry of abuse, neglect, and dependency cases and child fatalities that are the result of alleged maltreatment that are reported under this Article in order to compile data for appropriate study of the extent of abuse and neglect within the State and to identify repeated abuses of the same juvenile or of other juveniles in the same family. The Department of Health and Human Services shall also maintain a list of responsible individuals identified by county directors of social services. This data shall be furnished by county directors of social services to the Department of Health and Human Services and shall be confidential, except as specifically provided otherwise by statute or by rules ~~subject to policies~~ adopted by the Social Services Commission providing for its use for study and research and for other appropriate disclosure. Data shall not be used at any hearing or court proceeding unless based upon a final judgment of a court of law. The Social Services Commission may adopt rules pertaining to the operation of the central registry and responsible individuals list, including the following:

(1) Procedures for filing data.

(2) Procedures for notifying a responsible individual of a determination of abuse or neglect.

(3) Procedures for correcting and expunging information.

(4) Determining persons who are authorized to receive information from the responsible individuals list.

(5) Releasing information from the responsible individuals list to authorized requestors.

(6) Gathering statistical information.

(7) Keeping and maintaining information placed in the registry and on the responsible individuals list."

SECTION 5. Article 3 of Subchapter I of Chapter 7B of the General Statutes is amended by adding the following new section to read:

"**§ 7B-312. Requests for expunction, review, and appeal.**

(a) Any individual who has been identified as a responsible individual in an abuse or neglect case may, within 30 days after receipt of notice pursuant to G.S. 7B-302(g1), request the director who determined the abuse or neglect and identified the individual as a responsible individual to expunge the individual's name from the responsible individuals list. The request for expunction shall be in writing, addressed to the director who determined the abuse or neglect and identified the individual as a responsible individual, and delivered in person or by certified mail, return receipt requested, within 30 days after receipt of notice.

(b) After receipt of a timely request for the expunction of an individual's name from the responsible individuals list, the director shall, within 15 working days, review all records, reports, and other case documentation pertaining to the determination. The director shall determine whether there is substantial evidence to support the determination and the placement of the individual's name on the responsible individuals list, and proceed as follows:

(1) If the director decides that there is not substantial evidence in the records, reports, or other case documentation of the county department of social services to support a determination of abuse or neglect and to support the identification of the individual as a responsible individual, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list, and prepare and send the individual seeking expunction, by personal delivery or first-class mail, a written statement of the director's decision.

(2) If the director decides that there is substantial evidence in the records, reports, or other case documentation of the county department of social services to support a determination of abuse or neglect and to support the identification of the individual as a responsible individual, the director may uphold or modify the director's prior decision accordingly and shall prepare and send the individual seeking expunction, by personal delivery or first-class mail, a written statement of the director's decision, the reasons for the decision, a clear statement that it is a final decision, and the time by which the individual must file a petition for expunction with the district court. The director shall also include a second notice containing the information required by G.S. 7B-302(g1) and a copy of a petition for expunction form. If the director modifies the prior decision, the director shall notify the Department of Health and Human Services, which shall change its records accordingly.

(c) If, on review, the director determines that there is substantial evidence to support a determination of abuse or neglect and to support the identification of the individual as a responsible individual, the individual seeking expunction may, within 30 days after receipt of notice pursuant to subsection (b) of this section, request a review of the director's decision by the district court of the county in which the abuse or neglect report arose. If the director fails to act on the request for expunction within 30 working days after its receipt, this failure will function as a refusal to expunge the individual's name, and the individual seeking expunction may, within 30 days thereafter, request a review of the director's decision not to expunge the individual's name by the district court of the county in which the abuse or neglect report arose. The request shall be by a petition for expunction filed with the appropriate clerk of court's office with a copy delivered in person or by certified mail, return receipt requested, to the director. The petition for expunction shall contain the name, date of birth, and address of the individual seeking expunction, the name of the juvenile who was the subject of the

determination of abuse or neglect, and facts that invoke the jurisdiction of the court. Failure to timely file a petition for expunction constitutes a waiver of the individual's right to file a petition for expunction and to a district court hearing.

(d) The clerk of court shall maintain a separate docket for such expunction actions and upon receipt of a filed petition for expunction shall calendar the matter for hearing at a session of district court hearing juvenile matters and send notice of the hearing to the petitioner and the director. Upon the request of a party, the court may close the hearing to all persons, except officers of the court, the parties, and their witnesses. At the hearing, the director shall have the burden of proving by a preponderance of the evidence the correctness of the director's decision determining abuse or neglect and identifying the individual seeking expunction as a responsible individual. The hearing shall be before a judge without a jury. The rules of evidence applicable in civil cases shall apply. However, the court shall have discretion to permit the admission of any reliable and relevant evidence if the general purposes of the rules of evidence will be served and the interests of justice will best be served by its admission. At the hearing, the following rights of the parties shall be preserved:

(1) The right to present sworn evidence, law, or rules that bear upon the case.

(2) The right to represent themselves or obtain the services of an attorney at their own expense.

(3) The right to subpoena witnesses, cross-examine witnesses of the other party, and make a closing argument summarizing the party's view of the case and the law.

(e) After the hearing, the court shall enter a written order containing findings of fact and conclusions of law. The order shall be reduced to writing, signed, and entered no later than 30 days following the completion of the hearing. A copy of the order shall be served on each party or the party's attorney of record. If the court concludes that the director has not established by a preponderance of the evidence the correctness of the determination of abuse or neglect or the identification of the responsible individual, the court shall reverse the director's decision and order the director to notify the Department of Health and Human Services to expunge the individual's name from the responsible individual list. If the court concludes that sufficient evidence has not been presented to support a determination of abuse, but there is sufficient evidence to support a determination of neglect and the identification of the individual seeking expunction as a responsible individual, the court shall modify the director's decision and order the director to notify the Department of Health and Human Services to change the entry on the responsible individuals list to that of neglect. Any appeal shall be in accordance with G.S. 7A-27(c).

(f) Any individual who has been identified as a responsible individual in an abuse or neglect case shall no longer be entitled to challenge the placement of the individual's name on the responsible individuals list pursuant to this section if:

(1) That individual is criminally convicted as a result of the same incident.

(2) That individual is a respondent in a juvenile court proceeding regarding abuse or neglect resulting from the same incident.

(3) That individual fails to make a timely request to the director who made the determination of abuse or neglect and identified the individual as a responsible individual for the expunction of the individual's name from the responsible individuals list.

(4) That individual fails to file a petition for expunction in a timely manner.

(5) That individual fails to keep the county department of social services informed of his current address throughout an investigative assessment response and any request for expunction so that the individual may receive notification of the director's decisions.

If prior to or during any proceeding provided for in this section, an individual seeking expunction is named as a respondent in a juvenile court case resulting from the same incident, the director, the district court judge, or the Court of Appeals shall stay any further proceedings for the expunction of that individual's name from the responsible individuals list until the juvenile court case is concluded or dismissed. If a juvenile court case resulting from the same determination of abuse or neglect is dismissed, or concludes without an adjudication of abuse or neglect, or with an adjudication that differs from the prior determination, the director shall notify the Department of Health and Human Services to expunge the individual's name from the responsible individuals list or modify the prior decision of the director accordingly."

SECTION 6. This act becomes effective October 1, 2005, and applies to abuse or neglect reports received by county departments of social services on or after that date.

pulled from agenda at request of sponsor

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1514

Short Title:	Reckless Endangerment.	(Public)
Sponsors:	Representatives Ray; and Setzer.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO CREATE THE OFFENSE OF RECKLESS ENDANGERMENT.

The General Assembly of North Carolina enacts:

SECTION 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-401.22. Reckless endangerment.**

Any person who recklessly engages in conduct that creates a substantial risk of serious physical injury or death to another person is guilty of a Class 1 misdemeanor."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒Committee Substitute for
HB 1176 A BILL TO BE ENTITLED AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

☒ With a favorable report as to the committee substitute bill 3, which changes the title, unfavorable as to Committee Substitute Bill 2.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1176

Committee Substitute Favorable 5/2/05

Committee Substitute #2 Favorable 5/11/05

Short Title: Property Exempt From Enforcement Actions. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; periodic automatic adjustment of exemption amounts; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused

exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(5a) The debtor's aggregate interest, not to exceed four thousand dollars ($4,000) in value, in any wedding and engagement rings of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except

to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(13) The earnings of the debtor for the debtor's personal services, at any time within 60 days preceding an order under G.S. 1-362, an execution, or the filing of a petition for bankruptcy when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of the debtor or a family supported wholly or in part by the debtor's labor. Recent earnings exempt under this subdivision may only be waived pursuant to subdivision (2) of subsection (c) of this section.

(a1) Adjustment of Exemption Amounts. –

(1) The exemption amounts listed under subsection (a) of this section are effective until March 31, 2009. As of April 1, 2009, and every three years thereafter on April 1, the exemption amounts shall be equal to the exemption amounts for the preceding three-year period adjusted by the percentage change in the Consumer Price Index for All Urban Consumers published by the United States Department of Labor for the most recent three-year period ending December 31 immediately preceding April 1 of the year in which the automatic adjustment occurs, rounded to the nearest twenty-five dollars ($25.00). The percentage change shall be determined using the December index figures from the first and third years of the three-year period. Adjustments made in accordance with this subsection shall not apply to judgments and bankruptcy petitions filed before the date such adjustments are effective.

(2) No later than February 1 of the year in which the adjustment under this subsection occurs, the Administrative Office of the Courts shall notify the Office of State Budget and Management of the then current amount of each exemption under subsection (a) of this section. The Office of State Budget and Management shall calculate the adjustment in accordance with this subsection and provide the adjusted amounts to the Administrative Office of the Courts no later than March 1.

(3) The Revisor of Statutes shall cause subsection (a) of this section and G.S. 1C-1603, reflecting the adjusted amounts, to be printed at the next publication of the General Statutes or any supplement to the General Statutes immediately following an automatic adjustment under this subsection. No later than April 1, the Administrative Office of the Courts shall amend the Statement by the Debtor form to be filed by the debtor pursuant to G.S. 1C-1603(c) to include the adjusted amounts and the time period for which the amounts are effective.

(b) ~~Definition. "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~ (4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;

(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6.

(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;

(8) For statutory liens, on the specific property affected, other than judicial liens;

(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;

(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve ~~him~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice ~~must~~ shall be substantially in the following form:

NORTH CAROLINA _____ COUNTY	IN THE GENERAL COURT OF JUSTICE DISTRICT COURT DIVISION CvD
_____ Judgment Creditor	))) NOTICE OF PETITION (OR MOTION) TO SET

vs.	)	OFF DEBTOR'S
_____	)	EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

(1) ~~His~~ The debtor's assets, including their location;

(2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;

(3) The property ~~which~~ that ~~he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

NORTH CAROLINA		IN THE GENERAL COURT
_____ COUNTY		OF JUSTICE DISTRICT
		COURT DIVISION
		CvD
Judgment Creditor	)	SCHEDULE OF DEBTOR'S
	)	PROPERTY
vs.	)	AND REQUEST TO
	)	SET ASIDE EXEMPT
Judgment Debtor	)	PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;

2. That I was born on _____;
(date of birth)

3. That I am (married to _____)
(spouse's name)
_____;
(not married)

4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____
_____
_____
_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____
_____
_____
_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s) _____

_____

_____

_____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and	Year	Name(s) of	Name(s) of	Estimated

Model of Motor Vehicle	Title Owner of Record	Lien Holder(s) of Record	Value of Debtor's Interest

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

_____

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8), ~~$1,500~~$1,000 allowed here; (b) if you claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of $2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value: _____

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue

Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds

20. That I wish to claim as exempt the following wedding and engagement rings not to exceed $4,000 in value. I understand that I am entitled to this exemption after deduction of the amount of any valid liens or purchase money security interests.

Item (or Class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

~~16.~~21. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value

This the _____ day of_____, ____

Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

Notary Public My Commission Expires:".

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of ~~his~~ the debtor's rights was served in accordance with G.S. 1C-1603(a)(4) or if ~~he~~the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina ~~Constitution.~~Constitution, except as provided in G.S. 1C-1601(a)(13) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. G.S. 1-362 reads as rewritten:

"**§ 1-362. Debtor's property ordered sold.**

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and ~~personal property~~ other exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the ~~judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor.~~judgment. Wages of the judgment debtor shall not be garnished unless specifically authorized by statute."

SECTION 6. Except as otherwise provided, this act becomes effective January 1, 2006, and applies to judgments and bankruptcy petitions filed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1176 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 1, line 4 through 6

( ) WHICH CHANGES THE TITLE

by deleting the phrase " ENFORCEMENT, TO PROVIDE FOR FUTURE AUTOMATIC ADJUSTMENTS OF THESE CAPS ON EXEMPT PROPERTY, AND TO MAKE CONFORMING CHANGES." and substituting the phrase "ENFORCEMENT."

and on page 1, lines 9 through 10 by deleting the phrase "periodic automatic adjustment of exemption amounts;"

and on page 2 lines 19 through 20 by deleting those lines;

and on page 3 line 14 through page 4 line 8 by deleting those lines;

and on page 13, lines 27 through 37 by deleting those lines and renumbering the remaining section accordingly.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

P2

EDITION No. _____

H. B. No. 1176 DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 12, line s 42-44

( ) WHICH CHANGES THE TITLE

~~by~~ and on p. 13, lines 1-4 by deleting the lines.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1176

Committee Substitute Favorable 5/2/05
Committee Substitute #2 Favorable 5/11/05
PROPOSED COMMITTEE SUBSTITUTE H1176-PCS50438-RI-16

Short Title: Property Exempt From Enforcement Actions. (Public)

Sponsors:

Referred to:

April 12, 2005

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAP ON PROPERTY OF A JUDGMENT DEBTOR THAT IS FREE OF THE ENFORCEMENT OF THE CLAIMS OF CREDITORS, AND TO EXEMPT CERTAIN TYPES OF PROPERTY FROM ENFORCEMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1C-1601 reads as rewritten:

"**§ 1C-1601. What property exempt; waiver; exceptions.**

(a) Exempt property. – Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of creditors:

(1) The debtor's aggregate interest, not to exceed ~~ten thousand dollars ($10,000)~~eighteen thousand five hundred dollars ($18,500) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the ~~debtor.~~debtor; however, an unmarried debtor who is 65 years of age or older is entitled to retain an aggregate interest in the property not to exceed thirty-seven thousand dollars ($37,000) in value so long as the property was previously owned by the debtor as a tenant by the entireties or as a joint tenant with rights of survivorship and the former co-owner of the property is deceased.

(2) The debtor's aggregate interest in any property, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value ~~less any amount of the exemption used~~ of any unused exemption amount to which the debtor is entitled under subdivision ~~(1).~~(1) of this subsection.

(3) The debtor's interest, not to exceed ~~one thousand five hundred dollars ($1,500)~~three thousand five hundred dollars ($3,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~three thousand five hundred dollars ($3,500)~~five thousand dollars ($5,000) in value for the debtor plus ~~seven hundred fifty dollars ($750.00)~~one thousand dollars ($1,000) for each dependent of the debtor, not to exceed ~~three thousand dollars ($3,000)~~four thousand dollars ($4,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~seven hundred fifty dollars ($750.00)~~two thousand dollars ($2,000) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal ~~injury~~ injury, including compensation from private disability policies or annuities, or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(9) Individual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue ~~Code. For purposes of this subdivision, "Internal Revenue Code" means Code as defined in G.S. 105-228.90.~~ Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

(10) Funds in a college savings plan qualified under section 529 of the Internal Revenue Code, not to exceed a cumulative limit of twenty-five thousand dollars ($25,000), but excluding any funds placed in a college savings plan account within the preceding 12 months (except to the extent any of the contributions were made in the ordinary course of the debtor's financial affairs and were consistent with the debtor's past pattern of contributions) and only to the extent that the funds are

for a child of the debtor and will actually be used for the child's college or university expenses.

(11) Retirement benefits under the retirement plans of other states and governmental units of other states, to the extent that these benefits are exempt under the laws of the state or governmental unit under which the benefit plan is established.

(12) Alimony, support, separate maintenance, and child support payments or funds that have been received or to which the debtor is entitled, to the extent the payments or funds are reasonably necessary for the support of the debtor or any dependent of the debtor.

(b) ~~Definition. "Value" as used in this Article~~Definitions. – As used in this section, the following definitions apply:

(1) "Internal Revenue Code" means Code as defined in G.S. 105-228.90.

(2) "Value" means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. – The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property ~~transferred), or~~transferred);

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them; or

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. – The exemptions provided in subdivisions (2), (3), ~~(4)~~(4), and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for ~~bankruptcy.~~bankruptcy, unless the purchase of the property is directly traceable to the liquidation or conversion of property that may be exempt and no additional property was transferred into or used to acquire the replacement property.

(e) Exceptions. – The exemptions provided in this Article are inapplicable to claims:

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;

(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;

(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;

(5) For payment of obligations contracted for the purchase of the specific real property affected;
(6) Repealed by Session Laws 1981 (Regular Session, 1982), c. 1224, s. 6, effective September 1, 1982;
(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
(8) For statutory liens, on the specific property affected, other than judicial liens;
(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes;
(10) For criminal restitution orders docketed as civil judgments pursuant to G.S. 15A-1340.38.

(f) Federal Bankruptcy ~~Act.~~Code. – The exemptions provided in The Bankruptcy ~~Act,~~Code, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article and by other statutory or common law of this State shall apply for purposes of The Bankruptcy ~~Act,~~Code, 11 U.S.C. ~~§522(b).~~ § 522(b).

(g) Effect of exemptions. – Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

SECTION 2. G.S. 1C-1603(a)(4) reads as rewritten:

"(4) After judgment, except as provided in G.S. 1C-1603(a)(3) or when exemptions have already been designated, the clerk may not issue an execution or writ of possession unless notice from the court has been served upon the judgment debtor advising ~~him~~ the debtor of ~~his~~ the debtor's rights. The judgment creditor ~~must~~ shall cause the ~~notice~~ notice, which shall be accompanied by the form for the statement by the debtor under subsection (c) of this section, to be served on the debtor as provided in G.S. 1A-1, Rule 4(j)(1). If the judgment debtor cannot be served as provided above, the judgment creditor may serve ~~him~~ the judgment debtor by mailing a copy of the notice to the judgment debtor at ~~his~~ the debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The judgment creditor may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. The notice ~~must~~ shall be substantially in the following form:

NORTH CAROLINA	IN THE GENERAL COURT
_____ COUNTY	OF JUSTICE DISTRICT
	COURT DIVISION
	CvD

_____	)	NOTICE OF
Judgment Creditor	)	PETITION (OR
	)	MOTION) TO SET
vs.	)	OFF DEBTOR'S
_____	)	EXEMPT PROPERTY

GREETINGS:

You have been named as a "judgment debtor" in a proceeding initiated by a "judgment creditor". A "judgment debtor" is a person who a court has declared owes money to another, the "judgment creditor". The purpose of this proceeding is to make arrangements to collect that debt from you personally or from property you own.

It is important that you respond to this notice no later than 20 days after you receive it because you may lose valuable rights if you do nothing. You may wish to consider hiring an attorney to help you with this proceeding to make certain that you receive all the protections to which you are entitled under the North Carolina Constitution and laws.

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED ON THE "SCHEDULE OF DEBTOR'S PROPERTY AND REQUEST TO SET ASIDE EXEMPT PROPERTY" THAT IS ENCLOSED WITH THIS NOTICE.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property."

SECTION 3. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. – When proceedings are instituted, the debtor ~~must~~ shall file with the court a schedule of:

(1) ~~His~~ The debtor's assets, including their location;

(2) ~~His~~ The debtor's debts and the names and addresses of ~~his~~ the debtor's creditors;

(3) The property ~~which~~ that ~~he~~ the debtor desires designated as exempt.

The form for the statement ~~must~~ shall be substantially as follows:

NORTH CAROLINA	IN THE GENERAL COURT
_____ COUNTY	OF JUSTICE DISTRICT
	COURT DIVISION
	CvD

Judgment Creditor	)	SCHEDULE OF DEBTOR'S
	)	PROPERTY
vs.	)	AND REQUEST TO

	)	SET ASIDE EXEMPT
Judgment Debtor	)	PROPERTY

NOTICE TO JUDGMENT DEBTOR:

THERE ARE CERTAIN EXEMPTIONS UNDER STATE AND FEDERAL LAW THAT YOU ARE ENTITLED TO CLAIM IN ADDITION TO THE EXEMPTIONS LISTED BELOW.

These exemptions may include social security benefits, unemployment benefits, workers' compensation benefits, and earnings for your personal services rendered within the last 60 days. There is available to you a prompt procedure for challenging an attachment or levy on your property.

I, _____, being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of _____ County, North Carolina;

2. That I was born on _____;
(date of birth)

3. That I am (married to _____)
(spouse's name)
_____;
(not married)

4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at _____ which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark "not applicable" on the first line.

_____
_____
_____
_____

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

_____

_____

_____

_____

_____

8. That I wish to claim my interest in the following real or personal ~~property~~ property, or in a cooperative that owns property, that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed ~~$7,500.~~ $18,500, except that if I am unmarried and am 65 years of age or older, I am entitled to claim a total exemption in the residence and burial plots not to exceed $37,000 so long as the property was previously owned by me as a tenant by the entireties or as a joint tenant with rights of survivorship, and the former co-owner of the property is deceased.

I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

Property Location:

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property _____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:_____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

Record Owner(s) _____

_____

_____

_____

Estimated Value: _____

Lienholders: _____

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____

Address _____

(4) If others, attach additional pages.

If you are unmarried and 65 years of age or older, specify which, if any, property listed above was previously owned by you as a tenant by the entireties or as a joint tenant with rights of survivorship and as to which the former co-owner of the property is deceased:

_____

_____

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item

11. That I wish to claim the following implements, professional books, or tools (not to exceed ~~$500),~~$2,000), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding ~~is not~~ may not be exempt:

Item	Estimated Value

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of ~~$2,500.~~$5,000. I understand that I am also entitled to ~~$500~~$1,000 for each person dependent on me for support, but not to exceed ~~$2,000~~$4,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of ~~$1,000~~$3,500 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding ~~is not~~may not be exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest

14. That I wish to claim as exempt the following compensation ~~which~~ that I received or to which I am entitled for the personal injury of myself or a person upon whom I was dependent for ~~support~~ support, including compensation from a private disability policy or an annuity, or compensation ~~which~~ that I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury ~~which~~ that resulted in the payment of the compensation to me. I understand that if I wish to claim more than one amount of compensation exempt, I must attach additional pages setting forth the following information for each amount of compensation claimed exempt.

(a) amount of compensation _____

(b) method of payment: lump sum or installments _____

(If installments, state amount, frequency and duration of payments)

_____

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation _____

(d) ~~location~~ location/source of compensation if received in lump or ~~installments~~installments, including name and account number of any disability policy or annuity

_____

(e) unpaid debts arising out of the injury or death giving rise to compensation

Name and Address	Services Rendered	Amount of Debt

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than ~~$2,500~~$18,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to ~~$2,500~~an exemption of up to $5,000 in any property only if I made no claim under section (8) above ~~and that if I make a claim~~ or a claim that was less than $18,500 under section (8) ~~above,~~ above. I understand that I am entitled to ~~$2,500~~claim any unused amount that I was permitted to make under section (8) above up to a maximum of $5,000 in any ~~property minus any amount I claimed under section (8).~~property. (Examples: (a) if you claim ~~of $1,000~~$17,500 under section (8),

~~$1,500~~$1,000 allowed here; (b) if you claim ~~of $2,450~~$13,500 under section (8), ~~$50~~$5,000 allowed here; (c) if you claim ~~of $2,600~~$18,500 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding ~~is not~~may not be exempt.

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County _____ Township _____

Street Address _____

Legal Description:

Number by which county tax assessor identifies property

_____

_____

Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: _____ or describe the property in as much detail as possible.

Attach additional sheets if necessary.)

_____

_____

_____

_____

_____

_____

Record Owner(s): _____

_____

_____

_____

Estimated Value: _____

Lienholders:

(1) Name _____ Current Balance _____

Address _____

(2) Name _____ Current Balance _____

Address _____

(3) Name _____ Current Balance _____
Address _____
(4) If others, attach additional pages.

16. That I wish to claim as exempt the following retirement plans that I have that are individual retirement plans as described in the Internal Revenue Code or that are treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code.

Type of Retirement Account	Name of Account	Account Number

17. That I wish to claim as exempt the following funds I hold in a college savings plan, not to exceed $25,000. I understand that to qualify for this exemption, the college savings plan must qualify as a college savings plan under section 529 of the Internal Revenue Code, and the college savings plan must be for my child and must actually be used for my child's college or university expenses. I understand I may not exempt any funds I placed in this account within the preceding 12 months, except to the extent that any contributions were made in the ordinary course of my financial affairs and were consistent with my past pattern of contributions.

College Savings Plan	Account Number	Value	Name(s) of Child(ren) Beneficiaries

18. That I wish to claim as exempt the following retirement benefits to which I am entitled to under the retirement plans of other states and governmental units of other states. I understand that these benefits are exempt only to the extent these benefits are exempt under the laws of the state or governmental unit under which the benefit plan was established.

State/Governmental Unit	Name of Retirement Plan	Identifying Number

19. That I wish to claim as exempt any alimony, support, separate maintenance, or child support payments or funds that I have received or that I am entitled to receive. I understand that these payments are exempt only to the extent that they are reasonably necessary for my support or for the support of a person dependent on me for support.

Type of Support	Person Paying Support	Amount & Location of Funds

_____	_____	_____
_____	_____	_____
_____	_____	_____

~~16~~20. That the following is a complete listing of all of my assets ~~which~~ that I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated Value

This the _____ day of_____, ____

Judgment Debtor

Sworn to and Subscribed before
me this _____ day of_____, ____

Notary Public My Commission Expires:".

SECTION 4. G.S. 1C-1603(e)(2) reads as rewritten:

"(2) If the judgment debtor does not file a motion to designate exemptions with a schedule of assets within 20 days after notice of ~~his~~ the debtor's rights was served in accordance with G.S. 1C-1603(a)(4) or if ~~he~~the debtor does not request a hearing before the clerk within 20 days after service of the notice of rights and appear at the requested hearing, the judgment debtor has waived the exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina ~~Constitution.~~Constitution, except as provided in G.S. 1C-1601(a)(13) with regard to recent earnings. Upon request of the judgment creditor, the clerk shall issue a writ of execution or writ of possession."

SECTION 5. Except as otherwise provided, this act becomes effective January 1, 2006, and applies to judgments and bankruptcy petitions filed on or after that date.

House Pages

Rm. 415

Name Of Committee: Judiciary IV Date: 5-24-05

1. Name: Catherine Stover
   County: Gaston
   Sponsor: Bill Current
2. Name: Victoria Denholm
   County: Gaston
   Sponsor: Bill Current
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED HINES
2. Name: Jim Womack
3. Name: FRANK PREVO
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

Judiciary IV — 5-24-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	DOC
John Phelps	NCLM
Rob Lamm	HHS
Sarah Schmidt	NC Justice Center
Rob Schofield	NC Justice Center
Billy Brewer	Private Attorney
Doug Heron	NC Bar Association
Joey Giamfortone	Schering-Plough
Jim Mackey	Schering-Plough
Sherry Bradsher	DHHS/DSS
Adam Lamm	DHHS/DSS

VISITOR REGISTRATION SHEET

SD IV — 05/24/05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Laura Chintapalli	UNC-CH MSW student
Margaret Brooks	NCFPC
Eddie Caldwell	NC Sheriffs' Assn.
Colleen Kochanek	NCAWA
Lew Starling	S+W (Cornerstone EIRC)

MINUTES
HOUSE COMMITTEE ON JUDICIARY IV
Thursday, May 26, 2005

The House Committee on Judiciary IV met on Thursday, May 26, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced sergeants-at-arms and pages serving at the meeting.

Representative Justus, sponsor of House Bill 877, FORECLOSURE NOTICE OF SALE/DISP. OF PROCEEDS, moved to adopt the Proposed Committee Substitute for House Bill 877 for discussion purposes. The motion was adopted. Representative Justus spoke on the bill. Representative Daughtry moved that the Proposed Committee Substitute for House Bill 877 be given a favorable report, unfavorable to the original bill. The motion was adopted.

The Proposed Committee Substitute for House Bill 1504, LAW ENFORCEMENT OFFICER DISCIPLINE adopted at the May 24th meeting, was placed before the members. Representative Martin, sponsor, spoke on the bill. Following Representative Martin , several people from the public spoke on the bill. Those speaking in support were Mr. Andy Miller, NC Police Benevolent Association (PBA), Division Trustee; Mr. Mike McGuinness, PBA Attorney; and Mr. John Midgette, Executive Director, PBA. Speaking in opposition to the bill were Chief Glen Allen, President, NC Association of Chiefs of Police; Mr. Raymond Boutwell, Wake County Sheriff's office; Mr. Andy Romanet, League of Municipalities; and Mr. Dane Mastin, President, NC Sheriff's Association. Chairman Weiss called on Representative Martin to speak on the bill. Discussion followed. Mr. Eddie Caldwell, NC Sheriff's Association, answered questions asked by the members. Representative Parmon moved to give the Proposed Committee Substitute for House Bill 1504 a favorable report, unfavorable to the original bill. The motion failed.

Representative Ray, sponsor of House Bill 1543, AUTOPSY PHOTOS NOT PUBLIC RECORD, was introduced to speak on the bill. Representative Parmon moved to adopt the Proposed Committee Substitute for discussion purposes. The motion was adopted. A Legislative Incarceration Fiscal Note for the bill was distributed to members. Representative Ray explained the bill. Mr. John Bussian, a First Amendment counsel for the North Carolina Press Association, briefly spoke in opposition to the bill. Representative Ray spoke to remarks of Mr. Bussian. Mr. Dan Barkin, Deputy Managing Editor of the News and Observer, was introduced and spoke in opposition to the bill. Due to time constraints, Chairman Weiss said that the bill would be displaced until the next meeting.

The meeting was adjourned at 10:55 a.m.

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; HB 877: Committee Report, Bill, Committee Substitute; HB 1504: Bill, Bill Analysis, Proposed Committee Substitute; HB 1543: Bill, Bill Analysis, Legislative Incarceration Fiscal Note, Proposed Committee Substitute; Listing of Pages, Visitor Registration

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, May 26, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

HB 877 - FORECLOSURE NOTICE OF SALE/DISP. OF PROCEEDS.
Representative Justus

HB 1504 - LAW ENFORCEMENT OFFICER DISCIPLINE.
Representative Martin

HB 1543 - AUTOPSY PHOTOS NOT PUBLIC RECORD.
Representative Ray

ADJOURNMENT

reported out 5/26/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☐ Committee Substitute for

HB 877 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT ALL NOTICES OF SALE INDICATE THAT THE SALE MAY BE DELAYED AND TO DIRECT THE DISPOSITION OF PROCEEDS FROM FORECLOSURE SALES TO PROTECT SECOND AND SUCCESSOR MORTGAGEES AND JUDGMENT CREDITORS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

HOUSE BILL 877*

Short Title:	Foreclosure Notice of Sale/Disp. of Proceeds.	(Public)
Sponsors:	Representative Justus.	
Referred to:	Judiciary IV.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ALL NOTICES OF SALE INDICATE THAT THE SALE MAY BE DELAYED AND TO DIRECT THE DISPOSITION OF PROCEEDS FROM FORECLOSURE SALES TO PROTECT SECOND AND SUCCESSOR MORTGAGEES AND JUDGMENT CREDITORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.16A(2) reads as rewritten:

"(2) Designate the date, ~~hour~~ hour, including the possibility of a one-hour delay as provided in G.S. 45-21.23, and place of sale consistent with the provisions of the instrument and this Article;".

SECTION 2. G.S. 45-21.31 reads as rewritten:

"**§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

(a) The proceeds of any sale shall be applied by the person making the sale, in the following order, to the payment of –

(1) Costs and expenses of the sale, including the trustee's commission, if any, and a reasonable auctioneer's fee if ~~such~~ that expense has been ~~incurred;~~ incurred.

(2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to taxes thereon and the property was so ~~sold;~~ sold.

(3) Special assessments, or any installments thereof, against the property sold, which are due and unpaid, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to special assessments thereon and the property was so ~~sold;~~ sold.

(4) The obligation secured by the mortgage, deed of trust or conditional sale contract.

(5) Any judgment or other obligation of record secured by a mortgage, deed of trust, or conditional sales contract, in order of their respective priorities.

(b) Any surplus remaining after the application of the proceeds of the sale as set out in subsection (a) of this section shall be paid to the person or persons entitled ~~thereto, if the person who made the sale knows who is entitled thereto.~~ to that surplus. Otherwise, the surplus shall be paid to the clerk of the superior court of the county where the sale was had–

(1) In all cases when the owner of the property sold is dead and there is no qualified and acting personal representative of his estate, and

(2) In all cases when he is unable to locate the persons entitled thereto, and

(3) In all cases when the mortgagee, ~~trustee or vendor is, for any cause,~~ trustee, or vendor is in doubt as to who is entitled to ~~such~~ the surplus money, and

(4) In all cases when adverse claims thereto are asserted.

(c) Such payment to the clerk discharges the mortgagee, trustee or vendor from liability to the extent of the amount so paid.

(d) The clerk shall receive such money from the mortgagee, trustee or vendor and shall execute a receipt therefor.

(e) The clerk is liable on his official bond for the safekeeping of money so received until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a court of competent jurisdiction."

SECTION 3. This act becomes effective October 1, 2005, and applies to all pending foreclosure proceedings and foreclosure proceedings filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 877*
PROPOSED COMMITTEE SUBSTITUTE H877-PCS70491-RL-30

Short Title: Foreclosure Notice of Sale/Disp. of Proceeds. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ALL NOTICES OF SALE INDICATE THAT THE SALE MAY BE DELAYED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.16A(2) reads as rewritten:

"(2) Designate the date, ~~hour~~ hour, including the possibility of a one-hour delay as provided in G.S. 45-21.23, and place of sale consistent with the provisions of the instrument and this Article;".

SECTION 2. This act becomes effective October 1, 2005, and applies to all pending foreclosure proceedings and foreclosure proceedings filed on or after that date.

5/26

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1504

Short Title:	Law Enforcement Officer Discipline.	(Public)
Sponsors:	Representative Martin.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW OF DISCIPLINARY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 17F.**

"**Investigation and Discipline of Law Enforcement Officers.**

"**§ 17F-1. Definitions.**

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) 'Officer' means law enforcement officer.

"**§ 17F-2. Discharge, suspension, or demotion for just cause only.**

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"**§ 17F-3. Minimum procedures.**

If an employing agency considers matters that could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of, or any disciplinary action against, a law enforcement officer, each employing agency shall establish minimum procedures to ensure that any officer is afforded due process of law prior to the imposition of any disciplinary action against the officer. These procedures shall include, as a minimum, the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the officer's expense, the right to examine

any witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

"**§ 17F-4. Certain established procedures validated.**

Employing agencies using an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards set forth in G.S. 17F-3 or otherwise provides due process need not develop the procedures required by G.S. 17F-3 so long as the established system remains in place.

"**§ 17F-5. Permissible suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be a substantial and immediate threat to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In such a case, the officer shall be afforded the rights provided for in G.S. 17F-3, except that an officer's request to be heard by a complaint review board shall be made subsequent to the imposition of the suspension."

SECTION 2. This act becomes effective October 1, 2005, and applies to investigations and disciplinary proceedings commenced on or after that date.

5/26

HOUSE BILL 1504:
Law Enforcement Officer Discipline

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 19, 2005
Introduced by:	Rep. Martin	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition H1504-PCS70472-LL-11		

SUMMARY: House Bill 1504 would provide that law enforcement officers may only be discharged, suspended, or demoted for just cause and require employing agencies to establish minimum due process procedures prior to such adverse employment decisions, including the right to a hearing, the right to be represented by counsel, the right to examine witnesses and present evidence, and the right to have all meetings recorded.

The Proposed Committee Substitute deletes the words "or any disciplinary action against" on page 1, lines 24-25.

CURRENT LAW: Generally speaking, law enforcement officers are at-will employees who may be terminated within the discretion of the officer's employer. Despite this at-will status, local governments have the authority to establish personnel policies and internal grievance procedures that may offer certain due process protections for all municipal or county employees. Moreover, there are numerous federal and State statutory and common law exceptions to the at-will doctrine.

In North Carolina, career State employees subject to the State Personnel Act, which would include State law enforcement officers, may not be discharged, suspended, or demoted for disciplinary reasons, except for just cause. The statutes require notice to the employee prior to any disciplinary action and provide procedures for filing a grievance, filing a contested case with the Office of Administrative Hearings, and appeal procedures.

BILL ANALYSIS:

Applicability. – The bill would apply to all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C (NC Criminal Justice Education and Training Standards Commission) and 17E (NC Sheriffs' Education and Training Standards Commission) of the General Statutes. This would include municipal police officers as well as sheriffs. Law enforcement officers that are career State employees subject to the State Personnel Act, such as highway patrolmen, certain campus police officers, probation officers, are already granted certain employment protections under current law but would meet the definition of "law enforcement officer" under this bill.

Just Cause. – The bill would provide that no law enforcement officer may be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

Due Process Procedures. – The bill would require employing agencies to establish minimum procedures to ensure that officers are afforded due process prior to dismissal, demotion, suspension or transfer for punitive reasons. These procedures must include:

- The right to have hearing before a fair and impartial board or hearing officer.
- The right to be represented at the officer's expense.
- The right to call and examine witnesses and to present evidence.
- The right to have all meetings recorded.

Certain Procedures Validated. – If an employing agency uses an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards required under this bill, then the employing agency is not required to develop additional procedures.

Permissible Suspensions. – Under the bill, an employing agency would retain authority to suspend an officer immediately, with pay, if the officer's continued presence constitutes a substantial and immediate threat to the welfare of the agency or the public, or if the officer refuses to obey a direct order issued in accordance with the agency's written and disseminated rules and regulations. The suspended officer would still be entitled to the minimum due process procedures subsequent to the suspension.

EFFECTIVE DATE: This act becomes effective October 1, 2005, and applies to investigations and disciplinary proceedings commenced on or after that date.

BACKGROUND: At-will employment is a common law doctrine providing that absent the existence of a contract which specifically provides for the duration or termination of employment, employment is terminable at the will of either party irrespective of the quality of performance by the other party.

The employment-at-will rule has been the law in each of the United States, including North Carolina, since the last half of the 19th century. During the time of the rule's inception, courts viewed the relationship between employer and employee as being on equal footing in terms of bargaining power. During the first half of the 20th century, courts and legislatures slowly began to recognize that employers frequently have structural and economic advantages when negotiating with potential or current employees. Moreover, the recognition that employees were often in a position of being unable to protect their livelihood from unjust termination resulted in the development of numerous exceptions to the employment-at-will doctrine.

First, there are several statutory exceptions, which include restrictions by both Congress and the General Assembly. Federal statutes that modify the at-will employment rule include the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act. Generally, these acts prohibit an employer from making adverse employment decisions on the basis of discriminatory reasons. The North Carolina General Statutes modify the at-will employment rule in several ways as well. For example, an employer may not fire an employee for serving in the military, participating in certain administrative or judicial proceedings, or filing an action or investigation against the employer under the Worker's Compensation Act, the Occupational Safety and Health Act, the Wage and Hour Act, or the Mine Safety and Health Act. In addition to statutory exceptions, there are judicially created exceptions to the at-will employment rule, such as the tort of wrongful discharge when the employer's motive in dismissing an employee violates public policy. An example of this would be when an employer terminates an employee after attempting to coerce the employee into violating a statute or regulation.

5/26/05 motion to adopt failed

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1504
PROPOSED COMMITTEE SUBSTITUTE H1504-PCS70472-LL-11

Short Title: Law Enforcement Officer Discipline. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO STANDARDIZE THE INVESTIGATION AND DISCIPLINE OF LAW ENFORCEMENT OFFICERS AND TO PROVIDE FOR JUDICIAL REVIEW OF DISCIPLINARY ACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 17F.**

"**Investigation and Discipline of Law Enforcement Officers.**

"**§ 17F-1. Definitions.**

For purposes of this act:

(1) 'Employing agency' means any State agency or department, municipality, or political subdivision of the State that employs law enforcement officers.

(2) 'Law enforcement officer' means all officers with the powers of arrest as defined by law and required to be certified under Chapters 17C and 17E of the General Statutes.

(3) 'Officer' means law enforcement officer.

"**§ 17F-2. Discharge, suspension, or demotion for just cause only.**

No law enforcement officer shall be discharged, suspended, or demoted for disciplinary reasons, except for just cause.

"**§ 17F-3. Minimum procedures.**

If an employing agency considers matters that could reasonably lead to the dismissal, demotion, suspension, or transfer for punitive reasons of a law enforcement officer, each employing agency shall establish minimum procedures to ensure that any officer is afforded due process of law prior to the imposition of the disciplinary action against the officer. These procedures shall include, as a minimum, the right to a hearing before a fair and impartial board or hearing officer, the right to be represented at the

officer's expense, the right to examine any witnesses testifying against the officer, the right to call witnesses and present evidence, and the right to have all meetings recorded.

"**§ 17F-4. Certain established procedures validated.**

Employing agencies using an established civil service system, agency review board, civilian complaint board, or personnel board that meets the minimum standards set forth in G.S. 17F-3 or otherwise provides due process need not develop the procedures required by G.S. 17F-3 so long as the established system remains in place.

"**§ 17F-5. Permissible suspensions.**

Nothing in this Chapter precludes the immediate suspension with pay of any law enforcement officer if the employing agency considers the officer's continued presence on the job to be a substantial and immediate threat to the welfare of the agency or the public, nor shall anything in this Chapter preclude the suspension of an officer for refusing to obey a direct order issued in conformance with the employing agency's written and disseminated rules and regulations. In such a case, the officer shall be afforded the rights provided for in G.S. 17F-3, except that an officer's request to be heard by a complaint review board shall be made subsequent to the imposition of the suspension."

SECTION 2. This act becomes effective October 1, 2005, and applies to investigations and disciplinary proceedings commenced on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1543

Short Title:	Autopsy Photos not Public Record.	(Public)
Sponsors:	Representatives Ray; Culp, England, Folwell, Howard, Johnson, Justus, Pate, Setzer, and Steen.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report including any findings and interpretations prepared in accordance with G.S. 130A-389(a) is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge.A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report

shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.

(a) Any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings, but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class I felony.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class I felony, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes or copies an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class H felony."

SECTION 4. This act becomes effective July 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

HOUSE BILL 1543:
Autopsy Photos not Public Record

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 26, 2005
Introduced by:	Rep. Ray	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1543-CSRI-15		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) to House Bill 1543 would provide that photographs and video, and audio recordings of official autopsies are not public records. The text of an autopsy report, however, would continue to be a public record and fully accessible to the public. The PCS would authorize the custodian of the photographs or recordings to permit any member of the public to view them, but not to provide copies. The PCS would allow certain public officials and others to obtain copies for official use or specialized use only. Under the PCS, any person could seek an order through a special proceeding to obtain copies of the photos or recordings. The PCS would make the unauthorized disclosure of these materials a Class 2 misdemeanor and stealing the materials a Class 1 misdemeanor. The bill would become effective July 1, 2005 and apply to offenses committed on or after that date.***

PCS CHANGES TO ORIGINAL BILL: The PCS would -

- Specify that the Chief Medical Examiner or the investigating medical examiner is the custodian of all autopsy photographs or recordings.
- Provide that a physician may obtain copies of autopsy photographs or recordings in order to confer with attorneys or others with a bona fide professional need to use or understand forensic science.
- Provide that a person who willfully and knowingly violates the disclosure provisions is guilty of a Class 2 misdemeanor (rather than a Class I felony as provided in the original bill); provide that a person not authorized to obtain copies who willfully and knowingly removes or copies the photographs or recordings with intent to steal is guilty of a Class 1 misdemeanor (rather than a Class H felony as provided in the original bill).

CURRENT LAW: In North Carolina, unlike some other states, the right of public access to governmental records is not in the Constitution. The right is statutory only. The statutory right is very broad, however. The Public Records statute, G.S. Chapter 132, defines a public record to include any "documentary material, regardless of physical form or characteristics, made or received by an agency of North Carolina government or its subdivisions in connection with the transaction of public business". The statute goes on to provide that "it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." The State's Supreme Court has made clear that any exception to the public records statute must be made by the General Assembly, rather than by court-created exceptions. The General Assembly has made several statutory exceptions to the Public Records statute.

Under current law, autopsy reports, including photographs, video, and audio recordings made in connection with the autopsy, are public records as defined in G.S. 132-1.

In addition, the law that authorizes the medical examiner to conduct an official autopsy, G.S. 130A-389, also provides that a "copy of the report shall be furnished to other persons upon request." Official autopsies are those authorized by a medical examiner or requested by a district attorney or superior court judge. Private autopsies are those requested and paid for by a decedent's next-of-kin and become part of the decedent's medical records and therefore are not public records.

BILL ANALYSIS:

Section 1:

- Exempts photographs or video or audio recordings of official autopsies from the definition of a "public record."
- Makes clear that the text of an autopsy report is still a public record and fully accessible to the public.

Section 2:

- Amends G.S. 130A-389, Autopsies, to provide that copies of autopsy reports shall be furnished to any person upon request, subject to the limitations on disclosure of photographs and recordings provided under new G.S. 130A-389.1 as provided in section 3 of the bill.

Section 3:

- (a) Authorizes the custodian to permit any member of the public to view original photographs or recordings at reasonable times and under reasonable supervision **but generally prohibits the furnishing of copies**. Specifies that the Chief Medical Examiner or the investigating medical examiner would be the custodian of all autopsy photographs or recordings.
- (b) Provides that the following public officials could obtain copies for official use but would be prohibited from disclosing them to the public except for the purpose of identifying the deceased:
  - The Chief Medical Examiner or his designee
  - The investigating medical examiner
  - District attorney
  - Superior court judge
  - Law enforcement officials
- (c) Provides that after signing a statement acknowledging that they have received notice that unauthorized disclosure of autopsy recorded images is a crime, the following other persons could obtain copies but would be prohibited from disclosing them to the public unless authorized by law:
  - Personal representative of the decedent's estate
  - A person authorized by court order
  - A physician licensed in the State in order to confer with attorneys or others with a bona fide professional need to use or understand forensic science
  - After redacting all identifying information, another medical examiner, coroner, or physician, or their designee, for medical or scientific purposes or for teaching or training purposes.
- (d) Authorizes a person who is denied access to copies to commence a special proceeding under Article 33 of Chapter 1. A special proceeding is a simplified and expedited judicial proceeding heard by the clerk of superior court. Currently, matters such as probate, adoption and guardianship are handled by special proceeding. Upon a showing of good cause, the clerk could issue an order authorizing the person to copy or disclose the photos or recordings. The bill contains specific criteria for the court to consider in determining good cause. A person aggrieved by the decision of the clerk may appeal to the superior court for a de novo review.

- (e) Requires that a petitioner in such a special proceeding must give notice to the decedent's personal representative, if any, and to the next-of-kin.
- (f) Provides that the restrictions on disclosure do not apply to the use of autopsy photographs or video or audio recordings in criminal, civil, or administrative proceedings. This provision allows autopsy photographs or video or audio recordings to be used as evidence in a criminal or civil trial or an administrative proceeding. Once these documents become part of a court record they become public records and cannot be exempted without violating the Constitution. However, in a specific case, the court or presiding officer may restrict the use of the recorded images.
- (g) Provides that the willful and knowing violation of the section is a Class 2 misdemeanor, which is punishable by 1 to 30 days of community punishment, assuming no prior convictions.
- (h) Provides that the willful and knowing removal or copying of the photographs with intent to steal is a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

Section 4: The PCS would be effective July 1, 2005, and apply to unauthorized disclosures made on or after that date.

Karen Cochrane-Brown, counsel to House Judiciary II, and Bill Gilkeson, counsel to Senate Judiciary I, substantially contributed to this summary.

H1543e1-SMRI-CSRI

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1543 (First Edition)

SHORT TITLE: Autopsy Photos not Public Record.

SPONSOR(S): Representative Ray

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				

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

EFFECTIVE DATE: December 1, 2005

**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:

This bill creates an exemption from the Public Records Law for photographs and video or audio recordings of an autopsy. The bill also amends Chapter 132 of the General Statutes by adding a new section, which provides that any person may inspect or examine photographs or video or audio recordings of an autopsy at reasonable times and under reasonable supervision of the custodian. The custodian of the record is prohibited from providing copies of the record to the public, except as otherwise provided.

Two sets of individuals are allowed to access autopsy records under the bill: (1) public officials (chief medical examiner, investigating medical examiner, district attorney, superior court judge, and law enforcement officers conducting investigations) and (2) personal representatives of the estate of the deceased; a person authorized by order issued in a special proceeding; and a medical examiner, coroner, physician, or their designee who uses the material for teaching, training, or academic purposes. Unauthorized disclosure of an autopsy photograph or video or audio recording would be a Class I felony; willfully removing or copying an autopsy photograph or recording without authorization and with the intent to steal the record would be a Class H felony.

The bill additionally clarifies the procedure through which a person may access autopsy records, and makes conforming changes to notice requirements. New G.S. 130A-389.1(d) provides that a person who is denied access to copies of an autopsy record or who is restricted in their use may commence a special proceeding pursuant to Article 33, Chapter 1 of the General Statues. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose such record, and may prescribe any restrictions or stipulations that the clerk deems appropriate. Appeals may be made to superior court pursuant to Article 27A, Chapter 1 governing appeals and transfers from the clerk. The bill does not apply to civil proceedings.

ASSUMPTIONS AND METHODOLOGY:

Summary

As this bill creates new Class H and I felonies, it would be expected to result in some additional charges and convictions and would consequently incur a fiscal impact. Because the offenses are new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. However, as custodians of autopsy records would be expected to predominantly comply with the provisions of the bill, it is unlikely that a substantial number of new Class H and I charges and convictions would occur. As such, a substantial fiscal impact is not expected.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Because this bill would create new criminal offenses, the Sentencing Commission has no historical data from which to estimate how the legislation would impact prison population. The table on the next page outlines for Class H and I felony convictions in FY 2003-04 the active sentence rate, average active sentence length, and the number of convictions annually that would necessitate one additional prison bed in the first year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated $24,740.

Felony Offense Class	Active Rate	Average Active Sentence Length (min – max)	Threshold Prison Bed Impact
Class I	11%	7 – 9 months	If, for example, there were **ten** Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year.
Class H	37%	10 – 12 months	If, for example, there were **three** Class H felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year.

Non-Active Sentences: In FY 2003-04, 50 percent of Class H and 40 percent of Class I felony convictions resulted in intermediate sanctions; 13 percent of Class H and 49 percent of Class I convictions resulted in community sanctions. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of $10.94 per day for the first six months and $1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is $1.87 per day.

Judicial Branch

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

Because the bill provides for new Class I and Class H felony offenses, AOC is unable to estimate the number of new charges that may result from this bill. For any felony charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. AOC estimates the cost per charge based on offense class as shown in the table below.

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	*Indigent Defense*	*Total*	-
Class I Felony	$3,904	$1,931	**$5,835**	**$330**
Class H Felony	$4,096	$2,100	**$6,196**	**$359**

AOC also expects that this bill would have an impact on the workload of clerks due to special proceedings commenced to access autopsy records, but no data is available with which to estimate the number of such proceedings that would occur. As the bill does not apply to civil, criminal, or administrative proceedings, AOC expects that autopsy records introduced into evidence would become public records via the trial record and that clerks would not incur additional workload in carrying out measures to keep such records confidential.

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: Aaron Paul and Jim Mills

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



DATE: May 25, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

displaced to 5/31/05

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **D**

HOUSE BILL 1543
PROPOSED COMMITTEE SUBSTITUTE H1543-CSRI-15 [v.2]

5/18/2005 5:36:05 PM

Short Title: Autopsy Photos not Public Record. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report

shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.

(2) Investigating Medical Examiner.

(3) District attorney.

(4) Superior court judge.

(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings, but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.

(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or

audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 2 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor."

SECTION 4. This act becomes effective July 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

House Pages

Name Of Committee: J IV Da : 5-26-05

1. Name: Vicky Denholm
   County: Gastonia
   Sponsor: Bill Current
2. Name: Chris Evans
   County: Durham
   Sponsor: Miller
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: FRED HINES
2. Name: BRAD BARE FOOT
3. Name: JAY CALLAWAY
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

2b

JUDICIARY IV — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tyler Krieg	Bussian Law Firm
Dan Barlcin	The News + Observer
[signature]	DOC
Mick [signature]	PBA ASHEVILLE CHAPTER
LEONA HAMILTON	PBA ASHEVILLE CHAPTER
Miles Gurness	Lawyer/Public Official
JOHN C MIDGETTE	NCPBA
Andy Romanet	NCLM
Tom Doyle	NCPBA
RANDY BYRD	NCPBA
Marcus Pearson	NCPBA

VISITOR REGISTRATION SHEET

Judiciary IV — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
MANGUM, K.S.	WAKE FOREST POLICE DEPT.
Andy Mills	NC Police Benevolent Ass.
Dina Meng	NCPBA
Bea White	NCATL
Dana Martin	NC Sheriff's Assoc
Eddie Caldwell	NC Sheriff's Assoc.
GLEN ALLEN	NC Assoc. Chiefs of Police
Tim Boyum	News 14 Carolina
Pearla M. Alston	DHHS - HR
Michelle Bank	State Government Radio
Jeff Gray	Fraternal Order of Police

VISITOR REGISTRATION SHEET

Judiciary IV — May 26, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michael Stading	Fraternal Order of Police
Tori Saylor	NC PRESS ASSOC.
Raymond Boutwell	Wake County Board of Commissioners & WAKE County SHERIFF
Barry Smith	Freedom Manager
David Anders	PTFPAC
Lorin Mueller	NC Coalition of Police
Suzanne Brelly	GOVERNOR'S OFFICE
Gary Robertson	AP

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, May 31, 2005

The House Committee on Judiciary IV met on Tuesday, May 31, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced sergeants-at-arms serving at the meeting.

Chairman Weiss announced that HB 1543, AUTOPSY PHOTOS NOT PUBLIC RECORD, was being continued from the May 26th meeting and that the PCS adopted at that meeting was before the committee. Representative Ray, sponsor of the bill, moved to adopt an amendment to the bill. The motion to amend was adopted. The amendment is attached and made part of these minutes. She then spoke on the bill. Discussion followed.

Representative Justus moved that the amendment be rolled into a Committee Substitute and the new Committee Substitute be given a favorable report, as amended, unfavorable to the original bill. The motion was held while further discussion took place. After discussion, Chairman Weiss brought the motion back for vote adding that the staff is empowered to make any technical, grammatical and conforming adjustments before rolling out the Committee Substitute. The motion was adopted.

There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report, HB 1543, Bill Analysis, Amendment, Legislative Incarceration Fiscal Note, Committee Substitute, Listing of Pages, Visitor Registration

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 31, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

HB 1543 - AUTOPSY PHOTOS NOT PUBLIC RECORD.
Representative Ray

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1543 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1543

Short Title:	Autopsy Photos not Public Record.	(Public)
Sponsors:	Representatives Ray; Culp, England, Folwell, Howard, Johnson, Justus, Pate, Setzer, and Steen.	
Referred to:	Judiciary IV.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report including any findings and interpretations prepared in accordance with G.S. 130A-389(a) is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge.A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report

shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.
(2) Investigating Medical Examiner.
(3) District attorney.
(4) Superior court judge.
(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings, but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class I felony.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class I felony, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes or copies an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class H felony."

SECTION 4. This act becomes effective July 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

HOUSE BILL 1543:
Autopsy Photos not Public Record

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 26, 2005
Introduced by:	Rep. Ray	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1543-CSRI-15		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) to House Bill 1543 would provide that photographs and video, and audio recordings of official autopsies are not public records. The text of an autopsy report, however, would continue to be a public record and fully accessible to the public. The PCS would authorize the custodian of the photographs or recordings to permit any member of the public to view them, but not to provide copies. The PCS would allow certain public officials and others to obtain copies for official use or specialized use only. Under the PCS, any person could seek an order through a special proceeding to obtain copies of the photos or recordings. The PCS would make the unauthorized disclosure of these materials a Class 2 misdemeanor and stealing the materials a Class 1 misdemeanor. The bill would become effective July 1, 2005 and apply to offenses committed on or after that date.***

PCS CHANGES TO ORIGINAL BILL: The PCS would -

- Specify that the Chief Medical Examiner or the investigating medical examiner is the custodian of all autopsy photographs or recordings.
- Provide that a physician may obtain copies of autopsy photographs or recordings in order to confer with attorneys or others with a bona fide professional need to use or understand forensic science.
- Provide that a person who willfully and knowingly violates the disclosure provisions is guilty of a Class 2 misdemeanor (rather than a Class I felony as provided in the original bill); provide that a person not authorized to obtain copies who willfully and knowingly removes or copies the photographs or recordings with intent to steal is guilty of a Class 1 misdemeanor (rather than a Class H felony as provided in the original bill).

CURRENT LAW: In North Carolina, unlike some other states, the right of public access to governmental records is not in the Constitution. The right is statutory only. The statutory right is very broad, however. The Public Records statute, G.S. Chapter 132, defines a public record to include any "documentary material, regardless of physical form or characteristics, made or received by an agency of North Carolina government or its subdivisions in connection with the transaction of public business". The statute goes on to provide that "it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law." The State's Supreme Court has made clear that any exception to the public records statute must be made by the General Assembly, rather than by court-created exceptions. The General Assembly has made several statutory exceptions to the Public Records statute.

Under current law, autopsy reports, including photographs, video, and audio recordings made in connection with the autopsy, are public records as defined in G.S. 132-1.

In addition, the law that authorizes the medical examiner to conduct an official autopsy, G.S. 130A-389, also provides that a "copy of the report shall be furnished to other persons upon request." Official autopsies are those authorized by a medical examiner or requested by a district attorney or superior court judge. Private autopsies are those requested and paid for by a decedent's next-of-kin and become part of the decedent's medical records and therefore are not public records.

BILL ANALYSIS:

Section 1:

- Exempts photographs or video or audio recordings of official autopsies from the definition of a "public record."
- Makes clear that the text of an autopsy report is still a public record and fully accessible to the public.

Section 2:

- Amends G.S. 130A-389, Autopsies, to provide that copies of autopsy reports shall be furnished to any person upon request, subject to the limitations on disclosure of photographs and recordings provided under new G.S. 130A-389.1 as provided in section 3 of the bill.

Section 3:

- (a) Authorizes the custodian to permit any member of the public to view original photographs or recordings at reasonable times and under reasonable supervision **but generally prohibits the furnishing of copies.** Specifies that the Chief Medical Examiner or the investigating medical examiner would be the custodian of all autopsy photographs or recordings.
- (b) Provides that the following public officials could obtain copies for official use but would be prohibited from disclosing them to the public except for the purpose of identifying the deceased:
  - The Chief Medical Examiner or his designee
  - The investigating medical examiner
  - District attorney
  - Superior court judge
  - Law enforcement officials
- (c) Provides that after signing a statement acknowledging that they have received notice that unauthorized disclosure of autopsy recorded images is a crime, the following other persons could obtain copies but would be prohibited from disclosing them to the public unless authorized by law:
  - Personal representative of the decedent's estate
  - A person authorized by court order
  - A physician licensed in the State in order to confer with attorneys or others with a bona fide professional need to use or understand forensic science
  - After redacting all identifying information, another medical examiner, coroner, or physician, or their designee, for medical or scientific purposes or for teaching or training purposes.
- (d) Authorizes a person who is denied access to copies to commence a special proceeding under Article 33 of Chapter 1. A special proceeding is a simplified and expedited judicial proceeding heard by the clerk of superior court. Currently, matters such as probate, adoption and guardianship are handled by special proceeding. Upon a showing of good cause, the clerk could issue an order authorizing the person to copy or disclose the photos or recordings. The bill contains specific criteria for the court to consider in determining good cause. A person aggrieved by the decision of the clerk may appeal to the superior court for a de novo review.

- (e) Requires that a petitioner in such a special proceeding must give notice to the decedent's personal representative, if any, and to the next-of-kin.
- (f) Provides that the restrictions on disclosure do not apply to the use of autopsy photographs or video or audio recordings in criminal, civil, or administrative proceedings. This provision allows autopsy photographs or video or audio recordings to be used as evidence in a criminal or civil trial or an administrative proceeding. Once these documents become part of a court record they become public records and cannot be exempted without violating the Constitution. However, in a specific case, the court or presiding officer may restrict the use of the recorded images.
- (g) Provides that the willful and knowing violation of the section is a Class 2 misdemeanor, which is punishable by 1 to 30 days of community punishment, assuming no prior convictions.
- (h) Provides that the willful and knowing removal or copying of the photographs with intent to steal is a Class 1 misdemeanor, which is punishable by 1 to 45 days of community punishment, assuming no prior convictions.

Section 4: The PCS would be effective July 1, 2005, and apply to unauthorized disclosures made on or after that date.

Karen Cochrane-Brown, counsel to House Judiciary II, and Bill Gilkeson, counsel to Senate Judiciary I, substantially contributed to this summary.

H1543e1-SMRI-CSRI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. 1543 DATE 5/31/05

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

COMMITTEE SUBSTITUTE ✓

(Rep.) Ray
Sen.)

moves to amend the bill on page 4, line 16

( ) WHICH CHANGES THE TITLE

by inserting after the word "disclosure" the following phrase "to persons other than parties and attorneys to the proceedings"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1543 (First Edition)

SHORT TITLE: Autopsy Photos not Public Record.

SPONSOR(S): Representative Ray

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
GENERAL FUND					
Correction	Exact amount cannot be determined; no substantial impact anticipated.				
Judicial	Exact amount cannot be determined; no substantial impact anticipated.				
ADDITIONAL PRISON BEDS*	Exact amount cannot be determined; no substantial impact anticipated.				
POSITIONS: (cumulative)	Exact amount cannot be determined; no additional positions anticipated.				

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

EFFECTIVE DATE: December 1, 2005

**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:

This bill creates an exemption from the Public Records Law for photographs and video or audio recordings of an autopsy. The bill also amends Chapter 132 of the General Statutes by adding a new section, which provides that any person may inspect or examine photographs or video or audio recordings of an autopsy at reasonable times and under reasonable supervision of the custodian. The custodian of the record is prohibited from providing copies of the record to the public, except as otherwise provided.

Two sets of individuals are allowed to access autopsy records under the bill: (1) public officials (chief medical examiner, investigating medical examiner, district attorney, superior court judge, and law enforcement officers conducting investigations) and (2) personal representatives of the estate of the deceased; a person authorized by order issued in a special proceeding; and a medical examiner, coroner, physician, or their designee who uses the material for teaching, training, or academic purposes. Unauthorized disclosure of an autopsy photograph or video or audio recording would be a Class I felony; willfully removing or copying an autopsy photograph or recording without authorization and with the intent to steal the record would be a Class H felony.

The bill additionally clarifies the procedure through which a person may access autopsy records, and makes conforming changes to notice requirements. New G.S. 130A-389.1(d) provides that a person who is denied access to copies of an autopsy record or who is restricted in their use may commence a special proceeding pursuant to Article 33, Chapter 1 of the General Statues. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose such record, and may prescribe any restrictions or stipulations that the clerk deems appropriate. Appeals may be made to superior court pursuant to Article 27A, Chapter 1 governing appeals and transfers from the clerk. The bill does not apply to civil proceedings.

ASSUMPTIONS AND METHODOLOGY:

Summary

As this bill creates new Class H and I felonies, it would be expected to result in some additional charges and convictions and would consequently incur a fiscal impact. Because the offenses are new, there is no historical data from which to estimate the numbers of charges and convictions that would occur under the bill. However, as custodians of autopsy records would be expected to predominantly comply with the provisions of the bill, it is unlikely that a substantial number of new Class H and I charges and convictions would occur. As such, a substantial fiscal impact is not expected.

Department of Correction

The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, 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.*

Because this bill would create new criminal offenses, the Sentencing Commission has no historical data from which to estimate how the legislation would impact prison population. The table on the next page outlines for Class H and I felony convictions in FY 2003-04 the active sentence rate, average active sentence length, and the number of convictions annually that would necessitate one additional prison bed in the first year. The average annual operating cost for one prison bed in FY 2006-07 will be an estimated $24,740.

Felony Offense Class	Active Rate	Average Active Sentence Length (min – max)	Threshold Prison Bed Impact
Class I	11%	7 – 9 months	If, for example, there were **ten** Class I felony convictions per year, one additional prison bed would be needed in the first year and three beds in the second year.
Class H	37%	10 – 12 months	If, for example, there were **three** Class H felony convictions per year, one additional prison bed would be needed in the first year and two beds in the second year.

Non-Active Sentences: In FY 2003-04, 50 percent of Class H and 40 percent of Class I felony convictions resulted in intermediate sanctions; 13 percent of Class H and 49 percent of Class I convictions resulted in community sanctions. Probation officers in the Division of Community Corrections (DCC) supervise offenders with intermediate sanctions at an estimated cost of $10.94 per day for the first six months and $1.87 per day thereafter. (This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction.) The estimated cost for a supervised community offender is $1.87 per day.

Judicial Branch

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

Because the bill provides for new Class I and Class H felony offenses, AOC is unable to estimate the number of new charges that may result from this bill. For any felony charge due to this bill, there would be additional court and preparation time needed to process the charge, thus increasing superior court workload. AOC estimates the cost per charge based on offense class as shown in the table below.

Offense Class	Settled via Trial			Settled via Guilty Plea
	Court/Attorney Costs	*Indigent Defense*	*Total*	-
Class I Felony	$3,904	$1,931	**$5,835**	**$330**
Class H Felony	$4,096	$2,100	**$6,196**	**$359**

AOC also expects that this bill would have an impact on the workload of clerks due to special proceedings commenced to access autopsy records, but no data is available with which to estimate the number of such proceedings that would occur. As the bill does not apply to civil, criminal, or administrative proceedings, AOC expects that autopsy records introduced into evidence would become public records via the trial record and that clerks would not incur additional workload in carrying out measures to keep such records confidential.

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: Aaron Paul and Jim Mills

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

Official
Fiscal Research Division
Publication

DATE: May 25, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1543
PROPOSED COMMITTEE SUBSTITUTE H1543-PCS80419-RI-15

Short Title: Autopsy Photos not Public Record. (Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PHOTOGRAPHS AND VIDEO OR AUDIO RECORDINGS MADE PURSUANT TO AN AUTOPSY ARE NOT PUBLIC RECORDS AND TO ALLOW FOR LIMITED ACCESS TO RECORDED IMAGES OF AN AUTOPSY BY THE PUBLIC.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 132 of the General Statutes is amended by adding the following new section to read:

"**§ 132-1.8. Confidentiality of photographs and video or audio recordings made pursuant to autopsy.**

Except as otherwise provided in G.S. 130A-389.1, a photograph or video or audio recording of an official autopsy is not a public record as defined by G.S. 132-1. However, the text of an official autopsy report, including any findings and interpretations prepared in accordance with G.S. 130A-389(a), is a public record and fully accessible by the public. For purposes of this section, an official autopsy is an autopsy performed pursuant to G.S. 130A-389(a)."

SECTION 2. G.S. 130A-389 reads as rewritten:

"**§ 130A-389. Autopsies.**

(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. ~~Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A~~ Subject to the limitations of G.S. 130A-389.1 relating to photographs and video or audio recordings of an autopsy, a copy of the report

shall be furnished to ~~other persons~~ any person upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be one thousand dollars ($1,000).

(b) In deaths where the Chief Medical Examiner and the medical examiner investigating the case do not deem it advisable and in the public interest that an autopsy be performed, but the next-of-kin of the deceased requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform the autopsy and the cost shall be paid by the next-of-kin.

(c) When the next-of-kin of a decedent whose death does not fall under G.S. 130A-383 or 130A-384 requests that an autopsy be performed, the Chief Medical Examiner or a designated pathologist may perform that autopsy and the cost shall be paid by the next-of-kin.

(d) The report of autopsies performed pursuant to subsections (b) and (c) shall be a part of the decedents' medical records and therefore not public records open to inspection."

SECTION 3. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"**§ 130A-389.1. Photographs and video or audio recordings made pursuant to autopsy.**

(a) Except as otherwise provided by law, any person may inspect and examine original photographs or video or audio recordings of an autopsy performed pursuant to G.S. 130A-389(a) at reasonable times and under reasonable supervision of the custodian of the photographs or recordings. Except as otherwise provided by this section, no custodian of the original recorded images shall furnish copies of photographs or video or audio recordings of an autopsy to the public. For purposes of this section, the Chief Medical Examiner shall be the custodian of all autopsy photographs or video or audio recordings unless the photographs or recordings were taken by or at the direction of an investigating medical examiner and the investigating medical examiner retains the original photographs or recordings. If the investigating medical examiner has retained the original photographs or recordings, then the investigating medical examiner is the custodian of the photographs or video or audio recordings and must allow the public to inspect and examine them in accordance with this subsection.

(b) The following public officials may obtain copies of autopsy photographs or video or audio recordings for official use only. These public officials shall not disclose the photographs or video or audio recordings to the public except as provided by law:

(1) The Chief Medical Examiner or a pathologist designated by the Chief Medical Examiner.

(2) Investigating Medical Examiner.

(3) District attorney.

(4) Superior court judge.

(5) Law enforcement officials conducting an investigation relating to the death.

A public official authorized by this subsection to obtain copies may provide a copy of the photograph or videotape to another person for the sole purpose of aiding in the identification of the deceased through publication of the photograph or videotape.

(c) The following persons may obtain copies of autopsy photographs or video or audio recordings but may not disclose the photographs or video or audio recordings to the public unless otherwise authorized by law:

(1) The personal representative of the estate of the deceased.

(2) A person authorized by an order issued in a special proceeding pursuant to subsection (d) of this section.

(3) A physician licensed to practice in North Carolina who uses a copy of the photographs or video or audio recording to confer with attorneys or others with a bona fide professional need to use or understand forensic science, provided that the physician promptly returns the copy to the custodian.

(4) After redacting all information identifying the decedent, including name, address, and social security number, and after anonymizing any physical recognition, a medical examiner, coroner, physician, or their designee who uses such material for:

a. Medical or scientific teaching or training purposes;

b. Teaching or training of law enforcement personnel;

c. Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;

d. Conferring with medical or scientific experts in the field of forensic science; or

e. Publication in a scientific or medical journal or textbook.

A medical examiner, coroner, or physician who has in good faith complied with this subsection shall not be subject to any penalty under this section.

Any person who lawfully obtains a copy of a photograph or video or audio recording pursuant to this subsection shall be required to sign a statement acknowledging that they have received notice that any unauthorized disclosure of the photograph or video or audio recording is a Class 2 misdemeanor.

(d) A person who is denied access to copies of photographs or video or audio recordings, or who is restricted in the use the person may make of the photographs or video or audio recordings under this section, may commence a special proceeding in accordance with Article 33 of Chapter 1 of the General Statutes. Upon a showing of good cause, the clerk may issue an order authorizing the person to copy or disclose a photograph or video or audio recording of an autopsy and may prescribe any restrictions or stipulations that the clerk deems appropriate. In determining good cause, the clerk shall consider whether the disclosure is necessary for the public evaluation of governmental performance; the seriousness of the intrusion into the family's right to privacy and whether the disclosure is the least intrusive means available; and the availability of similar information in other public records, regardless of form. In all cases, the viewing, copying, listening to, or other handling of a photograph or video or

audio recording of an autopsy shall be under the direct supervision of the Chief Medical Examiner or the Chief Medical Examiner's designee. A party aggrieved by an order of the clerk may appeal to the appropriate court in accordance with Article 27A of Chapter 1 of the General Statutes.

(e) The petitioner shall provide reasonable notice of the commencement of a special proceeding, as authorized by subsection (d) of this section, and reasonable notice of the opportunity to be present and heard at any hearing on the matter in accordance with Rule 5 of the Rules of Civil Procedure. The notice shall be provided to the personal representative of the estate of the deceased, if any, and to the surviving spouse of the deceased. If there is no surviving spouse, then the notice shall be provided to the deceased's parents, and if the deceased has no living parent, then to the adult child of the deceased or to the guardian or custodian of a minor child of the deceased.

(f) This section does not apply to the use of autopsy photographs or video or audio recordings in a criminal, civil, or administrative proceeding except that nothing in this section prohibits a court or presiding officer, upon good cause shown, from restricting or otherwise controlling the disclosure to persons other than the parties and attorneys to the proceeding of an autopsy, crime scene, or similar photograph or video or audio recordings in the manner provided under this section.

(g) Any person who willfully and knowingly violates this section is guilty of a Class 2 misdemeanor, provided that more than one disclosure of the same item by the same person is not a separate offense.

(h) Any person not authorized by this section to obtain a copy of an autopsy photograph or video or audio recording, who knowingly and willfully removes, copies, or otherwise creates an image of an autopsy photograph or video or audio recording with intent to steal the same, is guilty of a Class 1 misdemeanor."

SECTION 4. This act becomes effective July 1, 2005, and applies to offenses committed on or after that date. This act applies to all unauthorized disclosures of autopsy photographs or video or audio recordings that occur on or after the effective date, regardless of whether the autopsy was performed before or after that date.

House Pages

Name Of Committee: Judiciary II Da :: 5-31-05

1. Name: _____
   County: _____
   Sponsor: _____
2. Name: _____
   County: _____
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5. Name: _____
   County: _____
   Sponsor: _____

No pages today. They are training for the week. (This is the day after a Monday holiday. Memorial Day.)

Sgt-At-Arms

1. Name: FRED HINES
2. Name: WALTER Spell } House Sgt @ Arms
3. Name: BRAD BAREFOOT
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — May 31, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Teri Saylor	NCPA
Kirby Dunbar	Capitol Group
Tim Boxum	News 14
Bill Wilson	NCATL
Barry Smith	Freedom Ventures
Steve Hartsell	AP
[illegible]	Capitol Group
[illegible]	NCMS
Holly Howington	intern, Rep Eddins
[illegible]	NC Med. Soc.
[illegible]	NCMS

VISITOR REGISTRATION SHEET

Judiciary IV Committee — May 31, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	Rodwell Thomas
Kenneth Johnson	Kenneth Johnson
Dave Simpson	Carolinas AGC
David Crawford	AIA
Lynn Bonner	N&O

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, June 28, 2005

The House Committee on Judiciary IV met on Tuesday, June 28, 2005 in Room 415 of the Legislative Office Building at 10:55 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice Chair Glazier, Vice-Chair Kiser, Representatives Daughtry, Holloway, Justus, Martin, Parmon, and staff attorneys Trina Griffin, Jennifer McGinnis, and Steve Rose. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order at 10:55 a.m. and announced that this meeting was being held to hear discussion on House Bill 1345, Limit Certain Self-Service Drug Purchases, and Senate Bill 686, Meth. Lab Prevention Act, and that no votes would be taken at today's meeting, and that there would be a total of no more than 25 minutes allotted to discussion of each bill.

Senator Dalton, Primary Sponsor, was introduced to speak on SB 686. Chairman Weiss then introduced The Honorable Roy Cooper, Attorney General of North Carolina, who spoke in favor of the bill. A pass-out of four pages titled "North Carolina Children Are The Victims of Meth Labs" was distributed to members of the committee. Mr. Mark Gwyn, Director, Tennessee Bureau of Investigation, Senator John Snow, and Mr. Darien South also spoke in favor of Senate Bill 686. Mr. South, a former firefighter, told of life-threatening and life-long injuries he sustained while fighting a fire at a home that contained a meth lab.

Representative Haire, a Primary Sponsor of House Bill 1345, was introduced to speak on the bill. Following his presentation, Staff Attorney Jennifer McGinnis was asked to go through the bill. Representative Coates, also a Primary Sponsor of House Bill 1345, then spoke on the bill.

Discussion of the bills followed. A sub-committee was named to further study the bills and report back to the full committee. Members of the sub-committee are Representative Glazier, Chair, and Representatives Justus, Martin, Parmon and Ray.

The meeting was adjourned at 12:00 noon.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; SB 686: Bill, Bill Analysis, Attachment (1); HB 1345: Bill, Bill Analysis; Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, June 28, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

SB 686 – METH. LAB PREVENTION ACT.
Senator Dalton

HB 1345 – LIMIT CERTAIN SELF-SERVICE DRUG PURCHASES.
Representatives Haire and Coates

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 686

Judiciary II Committee Substitute Adopted 4/26/05
Third Edition Engrossed 4/28/05

Short Title: Meth. Lab Prevention Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ADD PSEUDOEPHEDRINE, A CRITICAL INGREDIENT IN THE MANUFACTURE OF THE ILLEGAL DRUG METHAMPHETAMINE, TO SCHEDULE V OF THE CONTROLLED SUBSTANCES LIST; TO MAKE THE MANUFACTURE OF METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUES RELATING TO THE ABUSE OF METHAMPHETAMINE; AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-93 reads as rewritten:

"**§ 90-93. Schedule V controlled substances.**

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

(1) Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:

a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.

b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Repealed by Session Laws 1985, c. 172, s. 9.

(3) ~~Stimulants.~~ Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation ~~which~~ that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
a. Repealed by Session Laws 1993, c. 319, s. 7.
b. Pyrovalerone.

(4) Any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine base, its salts or isomers, or salts of isomers; however, this does not include compounds, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form unless pseudoephedrine is the only active ingredient.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding ~~the provisions of~~ G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, a nonpharmacist may complete the actual cash transaction, credit transaction, or delivery of a Schedule V ~~substance, may be completed by a nonpharmacist.~~ substance. A pharmacist may refuse to sell a Schedule V substance until ~~he~~ the pharmacist is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. If the Schedule V substance is pseudoephedrine, then the retail purchaser must provide a photo identification showing the date of birth of the person. The name and address obtained from ~~such~~ the identification shall be entered in the record of disposition to consumers.

(e) No person shall purchase, receive, or otherwise acquire more than nine grams of any mixture, product, or preparation containing the controlled substance described in subdivision (a)(4) of this section within any 30-day period; however, this limit does not apply if the controlled substance is dispensed under a valid prescription.

(f) Notwithstanding this section or any other law, a multistate, wholesale distributor of the controlled substance described in subdivision (a)(4) of this section may continue to warehouse or store this substance in the same manner as the distributor warehoused or stored the substance before the effective date of this subsection.

(g) Any person may request an exemption or conditional exemption from this Schedule for a specific product. The person requesting the exemption has the burden of proof for the exemption. The person shall provide the Commission with evidence that the product has been formulated in a way that serves as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine. This evidence shall include the furnishing of a valid scientific study, conducted by a professional laboratory and evincing professional quality chemical analysis, which is in accordance with uniform parameters set forth in writing by the Commission. This report shall include data, which is documented and can be reviewed, and a clear delineation of methodology.

The Commission shall decide whether to grant an exemption based on a consideration of all of the following factors:

(1) Ease with which the product can be converted into methamphetamine.

(2) Ease with which pseudoephedrine is extracted from the substance and whether it forms an emulsion, salt, or other form.

(3) Whether the product contains a molecular lock that renders it incapable of conversion into methamphetamine.

(4) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine.

(5) Any pertinent data that can be used to determine the risks of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance."

SECTION 2. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings."

SECTION 3.(a) The Legislative Research Commission may study the issues regarding the abuse of methamphetamine precursors used to make methamphetamine and any other issues that are relevant to that topic. In conducting the study, the Commission shall also consider how to address the problems presented by the abuse of methamphetamine, including educational and training programs that focus on curbing the use of methamphetamine in North Carolina. The Commission may also consider any other issues relevant to the study.

SECTION 3.(b) If the study authorized by this section is undertaken, the Legislative Research Commission shall appoint at a minimum the members to the study committee as provided by this subsection.

(1) The President Pro Tempore of the Senate shall appoint the following members:

a. One representative from the Office of the Attorney General.

b. One member of the Senate as appointed by the President Pro Tempore of the Senate.
c. One representative from the North Carolina Association of County Directors of Social Services.
d. One representative from the North Carolina Association of Community Pharmacists.
e. One representative from the Consumer Healthcare Products Association.

(2) The Speaker of the House of Representatives shall appoint the following members:
a. One member of the House of Representatives.
b. One representative from the Office of the Governor.
c. One representative from the North Carolina Retail Merchants Association.
d. One representative from the District Attorney's Association of North Carolina.
e. One representative from the North Carolina Sheriffs' Association, Inc.

SECTION 3.(c) The Legislative Research Commission may make an interim report to the 2005 General Assembly, Regular Session 2006, and shall make its final report to the 2007 General Assembly.

SECTION 3.(d) The Legislative Services Officer shall allocate funds appropriated to the General Assembly for the expenditures of the Legislative Services Commission in conducting this study.

SECTION 4. Sections 1 and 2 of this act become effective December 1, 2005, and apply to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2005.

SENATE BILL 686:
Meth. Lab Prevention Act

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 28, 2005
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis
Version:	Third Edition		Committee Counsel

SUMMARY: ***Senate Bill 686 would (i) add pseudoephedrine, an ingredient used to manufacture methamphetamine, to Schedule V of the Controlled Substances Act (Schedule V) with attendant restrictions, (ii) make the manufacture of methamphetamine in a dwelling that is one of four or more contiguous dwellings an aggravating factor, (iii) authorize the Legislative Research Commission (LRC) to study issues related to methamphetamine abuse, (iv) allow multi-state, wholesale distributors to continue to warehouse or store pseudoephedrine in the manner they currently do, and (v) authorize the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) to exempt specific products from Schedule V.***

BILL ANALYSIS:

ADD PSEUDOEPHEDRINE TO SCHEDULE V OF THE CONTROLLED SUBSTANCE ACT (Section 1)

CURRENT LAW: The Controlled Substances Act[1] categorizes by Schedules the different types of controlled substances subject to the Act. Schedule I controlled substances are those that have (i) a high potential for abuse, (ii) no currently accepted medical use in the United States, or (iii) a lack of accepted safety for use in treatment under medical supervision. Schedule V controlled substances have (i) a low potential for abuse relative to those listed in Schedules I-IV, (ii) currently accepted medical use in the United States, and (iii) limited physical or psychological dependence relative to the substances listed in Schedules III or IV. Schedule V substances include narcotics and stimulants. (Methamphetamine is a Schedule II substance.)

Schedule V substances may be sold at retail without a prescription only by a registered pharmacist, only for a medical purpose, and only to someone at least 18 years old. A nonpharmacist may complete the actual cash transaction, credit transaction, or delivery of a Schedule V substance. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification. The purchaser's name and address must be entered in the record of disposition to consumers. This is not a public record, but may be disclosed at the pharmacist's discretion.[2]

Currently sold retail without a prescription, pseudoephedrine is a decongestant that comes as a regular tablet and capsule, extended-release (long-acting) tablet and capsule, liquid, and drops for children to take by mouth. Pseudoephedrine may be used to manufacture methamphetamine.

Unlawful possession of a Schedule V substance is a Class 2 misdemeanor. Assuming no prior convictions, the presumptive minimum sentence for a person convicted of a Class 2 misdemeanor is 1-30 days community punishment.

To unlawfully manufacture, deliver, or possess with intent to manufacture, sell or deliver, a Class V substance is a Class I felony. Assuming no prior convictions, the presumptive minimum sentence for a person convicted of a Class I felony is 4-6 months community punishment.

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[1] Article 5 of Chapter 90 of the General Statutes.

[2] G.S. 90-85.36(c).

To unlawfully sell a Schedule V substance is a Class H felony, punishable by an absolute minimum of four months community service and an absolute maximum of 30 months active, depending on the defendant's prior record.

ANALYSIS: Section 1 of the bill would amend G.S. 90-93 to make the following changes:

- Add to the list of Schedule V substances pseudoephedrine when it is in the form of (i) a tablet or capsule or (ii) a liquid, liquid capsule, or gel capsule where it is the only active ingredient.
- Require a retail purchaser of pseudoephedrine to provide a photo identification showing the purchaser's birth date.
- Limit the purchase, receipt, or acquisition of products containing pseudoephedrine without a prescription to nine grams within any 30-day period.
- Allow multi-state wholesale distributors to continue to warehouse or store pseudoephedrine in the same manner as they currently do.
- Authorize the Commission, by rule, to exempt other products from Schedule V that the Commission finds are not used in the illegal manufacture of methamphetamine or other dangerous controlled substances. Drug manufacturers may apply for removal of a product from this Schedule if the Commission determines it has been formulated so that the active ingredient cannot be converted into methamphetamine.

Section 1 would become effective December 1, 2005, and would apply to offenses committed on or after that date.

AGGRAVATING FACTOR AND CONTIGUOUS DWELLINGS (Section 2)

CURRENT LAW: A court must consider evidence of aggravating or mitigating factors in felony sentencing.[3] If the court finds that aggravating or mitigating factors exist, it may depart from the presumptive ranges of sentences specified in the felony sentencing chart. The State bears the burden of proving by a preponderance of the evidence that an aggravating factor exists. The defense bears the burden of proving by a preponderance of the evidence that a mitigating factor exists.

The unlawful manufacture of methamphetamine is a Class C felony. Assuming no prior convictions, the presumptive minimum sentence for a person convicted of a Class C felony is 58-73 months active punishment.

ANALYSIS: Section 2 of Senate Bill 686 would amend G.S. 15A-1340.16(d) by adding a new subdivision (16b) so that, in a case involving the manufacture of methamphetamine, if the offense was committed in a dwelling that is one of four or more contiguous dwellings, this would be an aggravating factor to be considered in sentencing.

Section 2 would become effective December 1, 2005, and would apply to offenses committed on or after that date.

LRC STUDY METHAMPHETAMINE ABUSE ISSUES (Section 3)

Section 3 of Senate Bill 686 would authorize the LRC to study issues concerning the abuse of methamphetamine precursors used to make methamphetamine. If the LRC opts to undertake this study, the committee would consist of 10 members, five appointed by the President Pro Tempore of the Senate and five appointed by the Speaker of the House of Representatives. The LRC may make an interim

[3] G.S. 15A-1340.16.

report to the 2006 Session of the General Assembly, and shall make its final report to the 2007 Session of the General Assembly.

This section would become effective July 1, 2005.

BACKGROUND: According to the Office of National Drug Control Policy (ONDCP), Methamphetamine is a growing threat to North Carolina. It. can be manufactured easily in clandestine laboratories (meth labs) using ingredients purchased in local stores. Over-the-counter cold medicines containing ephedrine or pseudoephedrine and other materials are "cooked" in meth labs to make methamphetamine.

Meth labs can be portable and so are easily dismantled, stored, or moved. This portability helps methamphetamine manufacturers avoid law enforcement authorities. Meth labs have been found in many different types of locations, including apartments, hotel rooms, rented storage spaces, and trucks. Methamphetamine labs have been known to be boobytrapped and lab operators are often well armed.

In 2004, 322 meth labs were found in North Carolina. (In 2001, only 34 were found.)

Robin Johnson, counsel to Senate Judiciary II, substantially prepared this summary.

S0686e3-SMRI

attachment
SB-686

NORTH CAROLINA ALLIANCE
FOR DRUG ENDANGERED CHILDREN
Rescue. Defend. Shelter. Support.

North Carolina Children Are The Victims of Meth Labs

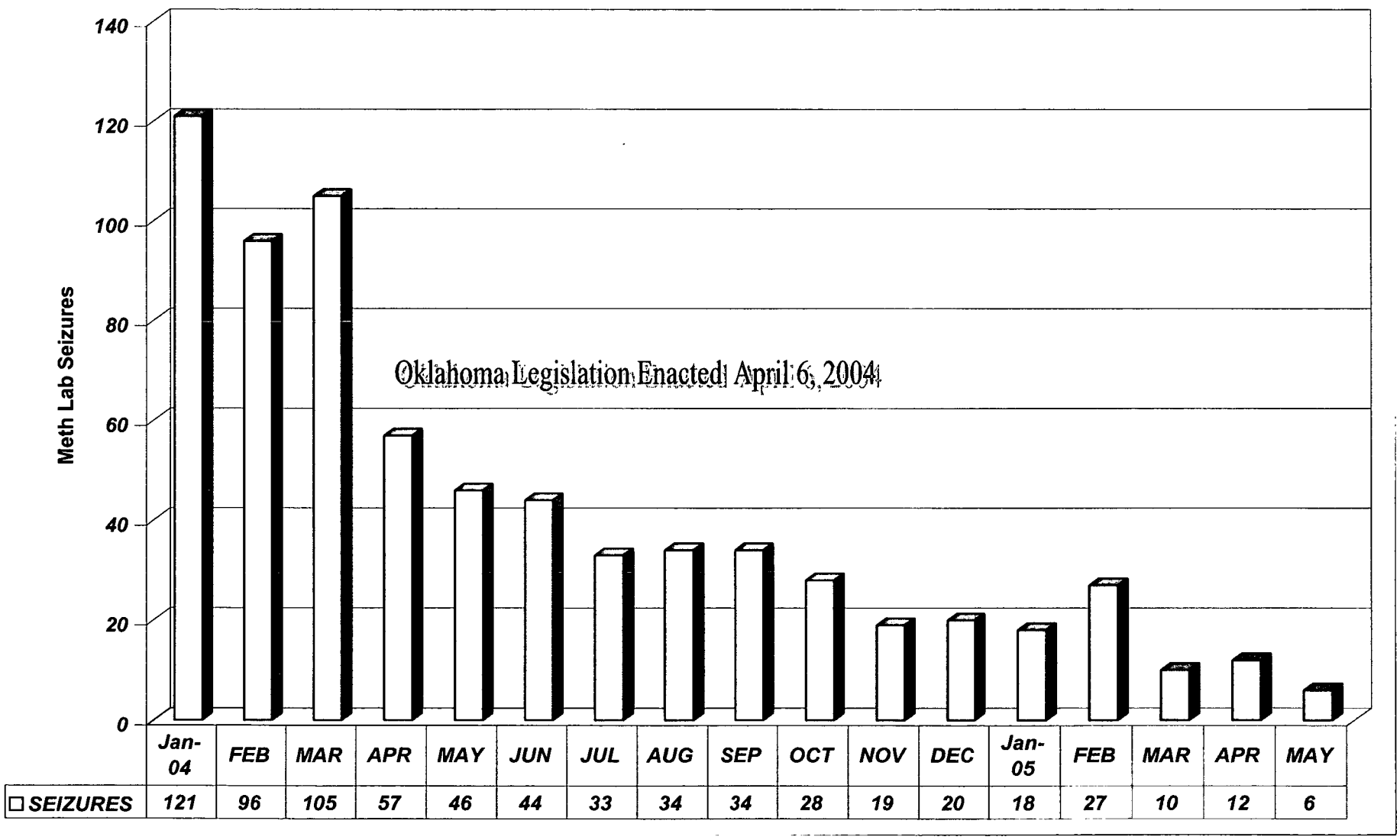
The Growing Meth Problem is Hurting Our Children.

Support S 686
Meth Lab Prevention Act

North Carolina law enforcement officers are finding children living in more than 20% of homes where meth is made. In 2004, 124 children were found living in meth labs in the state. Already this year, SBI agents have discovered 75 children in meth labs. Children in these homes are exposed to toxic chemicals and threatened by fire and explosions, and they're often neglected or abused.



STATE OF OKLAHOMA



	Jan-04	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	Jan-05	FEB	MAR	APR	MAY
SEIZURES	121	96	105	57	46	44	33	34	34	28	19	20	18	27	10	12	6

Meth Lab Prevention Act - S686

Supporters:
North Carolina Sheriffs' Association
North Carolina Association of Chiefs of Police
North Carolina Association of County Social Service Directors
Covenant with North Carolina's Children
North Carolina Psychiatric Association
North Carolina Narcotic Enforcement Officers Association
Attorney General Roy Cooper
North Carolina State Bureau of Investigation

Restricts the sale of pseudoephedrine tablets, a key ingredient in the manufacturing of methamphetamine. *(NOTE: Liquid and gel products containing pseudoephedrine will **not** be restricted since they are not commonly used in the manufacture of methamphetamine.)*

- Adults can purchase pseudoephedrine tablets without a prescription, but only at a licensed pharmacy.
- Anyone buying pseudoephedrine must show a photo ID; the name and address from the ID will be entered in sales records.
- No one may purchase more than 9 grams of pseudoehpedrine within a 30-day period, unless he or she has a valid prescription.

Provides for tougher penalties for certain meth labs: Makes it an aggravating factor if a person makes meth in a multi-dwelling contiguous housing unit, such as an apartment or motel, since the toxic chemicals emitted during the meth manufacturing process could endanger residents in neighboring units.

Calls for additional study on fighting this dangerous drug: Any further study on restricting access to meth ingredients or on other efforts to eliminate methamphetamine would include law enforcement officials and prosecutors, pharmacists and health care professionals, and others.

Retail merchants who have already voluntarily agreed to take these products off their shelves and place them behind the Pharmacy counter:

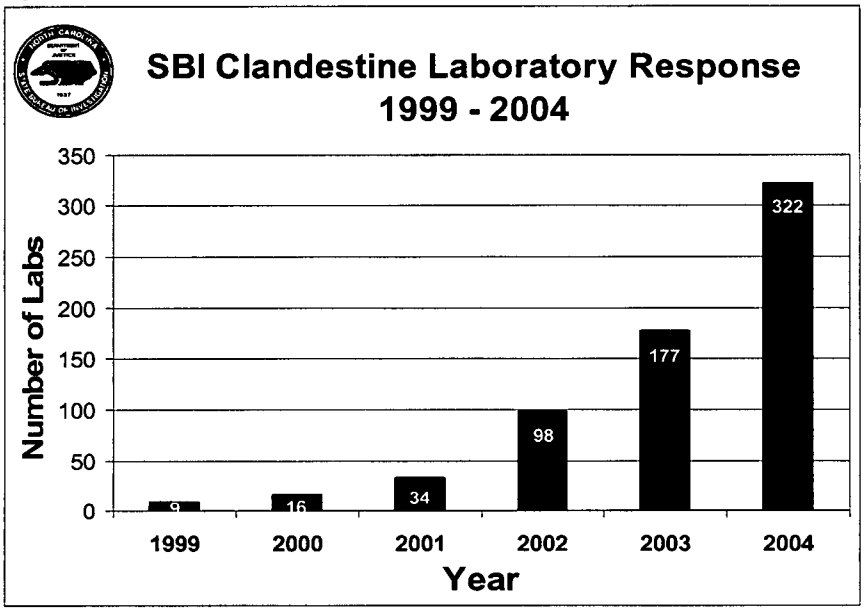
- **Wal-Mart**
- **CVS**
- **Target**
- **Walgreen's**
- **Albertson's**

Ten other states have passed similar legislation. Oklahoma, the first state to pass this law, has seen almost an 80% reduction in the number of meth lab busts. Tennessee unanimously passed almost identical legislation earlier this year.

Roy Cooper
North Carolina Attorney General

METHAMPHETAMINE: NORTH CAROLINA'S FASTEST-GROWING DRUG PROBLEM – SUPPORT S 686 METH LAB PREVENTION ACT

Meth lab busts have increased dramatically since 1999. In 1999, the State Bureau of Investigation (SBI) busted only nine labs. In 2004, they discovered 322 meth labs – more than 35 times as many as 1999. [State Bureau of Investigation, December 2004]. As of June 21st, the SBI has busted 194 labs so far this year. [SBI, June 2005].



The growing meth problem is hurting our children. North Carolina law enforcement officers are finding children living in more than 20 percent of homes where meth is made. In 2004, 124 children were found living in meth labs in the state. [SBI, December 2004]. Already this year, SBI agents have discovered 75 children in meth labs. [SBI, June 2005]. Children in these homes are exposed to toxic chemicals and threatened by fire and explosions, and they're often neglected or abused.

Tougher penalties are helping but we need to do more. Last year, Attorney General Roy Cooper and legislators pushed through tougher penalties against meth manufacturers. Local prosecutors are using the new law to put meth makers behind bars. Earlier this year, a Chatham County woman was sentenced to five years of prison for using her two children to help make meth. "It was one of the first cases to take advantage of a new law which hands down tougher penalties for making meth." ["Chatham Woman Accused of Using Kids to Make Meth," *WRAL.com*, February 21, 2005].

Cold remedy limits dramatically reduce meth labs. Criminals can't make meth without pseudoephedrine or ephedrine, found in over-the-counter cold remedies. Oklahoma has seen a startling 80 percent reduction in meth lab busts since enacting its new law. [Oklahoma Bureau of Narcotics and Dangerous Drug Control]. Tennessee unanimously passed nearly identical legislation to S 686 – Meth Lab Prevention Act. Ten states have already enacted the Oklahoma model legislation.

Cold remedies will still be available. Gel cap and liquid cold remedies, which most children take, will still be available over the counter.. Tablets containing pseudoephedrine will still be widely available behind the counter in pharmacies.

NC Department of Justice • 9001 Mail Service Center Raleigh, NC 27699-9001 • (919) 716-6400

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1345

Short Title:	Limit Certain Self-Service Drug Purchases.	(Public)
Sponsors:	Representatives Haire, Coates (Primary Sponsors); Insko, Justice, Kiser, Martin, Rapp, Sherrill, Underhill, and Weiss.	
Referred to:	Judiciary III.	

April 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CERTAIN PSEUDOEPHEDRINE PRODUCTS SHALL NOT BE OFFERED FOR SELF-SERVICE SALES AND SHALL BE STORED BEHIND THE COUNTER, TO PROVIDE THAT STEALING A PRODUCT THAT CONTAINS MORE THAN NINE GRAMS OF PSEUDOEPHEDRINE IS FELONY LARCENY, TO PROHIBIT THE SALE OF CERTAIN PRODUCTS BY CERTAIN PERSONS, AND TO ESTABLISH THE NORTH CAROLINA METHAMPHETAMINE ABUSE TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-94.1. Pseudoephedrine: prohibit over-the-counter sales.**

(a) A product whose sole active ingredient is pseudoephedrine in strength of 30 milligrams or more per tablet or caplet shall not be offered for retail sale loose in bottles but shall be sold only in blister packages. The product shall not be offered for retail sale by self-service and shall be stored behind a counter or barrier or in a locked container in such a manner that it is not accessible by the public and is only accessible by a retail store employee.

(b) No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter sale more than three packages containing a combined total of more than nine grams of any product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients.

(c) This section does not apply to any of the following:

(1) Pediatric products primarily intended for administration, according to label instructions, to children under 12 years of age, either:

a. In solid dosage form when individual dosage units do not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or

b. In liquid form when recommended dosage units, according to label instructions, do not exceed 15 milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Products in liquid form that are primarily intended for administration to children under two years of age for whom the recommended dosage does not exceed two milliliters and that have a total package content of not more than one fluid ounce.

(3) A product in the form of gel capsules including any soft gelatin liquid-filled capsule that contains a liquid suspension, which, in the case of pseudoephedrine, is suspended in a matrix of glycerin, polyethylene glycol, and propylene glycol, along with other liquid substances. Regardless of the product manufacturer's labeling, a gelatin-covered solid does not constitute a "gel capsule" under this provision.

(d) A retailer who is the general owner or operator of an establishment where pseudoephedrine products are available for sale who violates subsection (a) or (b) of this section shall not be penalized pursuant to this section if the retailer documents that an employee training program was conducted by or approved by the North Carolina Methamphetamine Abuse Task Force pursuant to G.S. 114-44 and the employee in question received the training.

(e) A violation of this subsection is a Class 1 misdemeanor on a first offense and a Class I felony for a second or subsequent offense.

(f) This section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing pseudoephedrine."

SECTION 2. G.S. 14-72(b) is amended by adding a new subdivision to read:

"(6) In excess of nine grams of any product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients."

SECTION 3. Article 32 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-254.1. Certain sales prohibited.**

No person who is described by G.S. 66-250(1), (2), (5), or (6) shall sell or offer to sell any product that meets any of the following criteria:

(1) The product contains three or more grams of pseudoephedrine as the sole active ingredient or in combination with other active ingredients.

(2) The product is a drug as defined by G.S. 106-121(6).

(3) The product is defined as "infant formula" pursuant to 21 U.S.C.§ 321(z)."

SECTION 4. Article 7 of Chapter 114 is amended by adding a new section to read:

"§ 114-44. North Carolina Methamphetamine Abuse Task Force.

(a) Establishment. – The North Carolina Methamphetamine Abuse Task Force is established. The Task Force shall be located within the Department of Justice for organizational, budgetary, and administrative purposes.

(b) Purpose. – The purpose of the Task Force is to develop training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale. The Task Force may also conduct or approve training programs for establishments where pseudoephedrine products are available for sale.

(c) Membership. – The Task Force shall consist of 10 members: one representative from each of the following agencies and organizations to be appointed as follows:

(1) The Office of the Governor as appointed by the Governor.

(2) The Office of the Attorney General as appointed by the Attorney General.

(3) One member of the Senate as appointed by the President Pro Tempore of the Senate.

(4) One member of the House of Representatives as appointed by the Speaker of the House of Representatives.

(5) The North Carolina Association of County Directors of Social Services as appointed by the President Pro Tempore of the Senate.

(6) The North Carolina Retail Merchants Association as appointed by the Speaker of the House of Representatives.

(7) The North Carolina Association of Community Pharmacists as appointed by the Governor.

(8) The District Attorney's Association of North Carolina as appointed by the Governor.

(9) The Consumer Healthcare Products Association as appointed by the Governor.

(10) The North Carolina Sheriffs' Association, Inc., as appointed by the Governor.

(d) Terms. – Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint three members for terms of two years and two members for terms of three years.

(2) The President Pro Tempore of the Senate shall initially appoint one member for a term of two years and one member for terms of three years.

(3) The Speaker of the House of Representatives shall initially appoint one member for a term of two years and one member for a term of three years.

(4) The Attorney General shall appoint one member for a term of three years.

Initial terms shall commence on September 1, 2005.

(e) Chair. – The chair shall be appointed biennially by the Governor from among the membership of the Task Force. The initial term shall commence on September 1, 2005.

(f) Vacancies. – A vacancy on the Task Force or as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. – The Task Force members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Task Force, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. – Members may be removed in accordance with G.S. 143B-13 as if that section applied to this section.

(i) Meetings. – The chair shall convene the Task Force. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. – A majority of the members of the Task Force shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Task Force shall be necessary for action to be taken by the Task Force.

(k) Office Space and Staffing. – The Department of Justice shall provide office space and staffing to the Task Force."

SECTION 5. There is appropriated from the General Fund to the Department of Justice the sum of twenty-five thousand dollars ($25,000) for the 2005-2006 fiscal year and twenty-five thousand dollars ($25,000) for the 2006-2007 fiscal year to be allocated to the North Carolina Methamphetamine Abuse Task Force to implement Section 4 of this act.

SECTION 6. Section 4 of this act becomes effective September 1, 2005; Section 5 and Section 6 of this act become effective July 1, 2005; and the remainder of this act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

HOUSE BILL 1345:
Limit Certain Self-Service Drug Purchases

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 28, 2005
Introduced by:	Reps. Haire, Coates	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1345 would: (i) provide that certain products that contain pseudoephedrine, an ingredient used to manufacture methamphetamine, must not be made available for self-service retail sale, and would place restrictions on the packaging of such products; (ii) restrict the amount of certain products that contain pseudoephedrine that may be purchased or delivered in a single over-the-counter sale; (iii) make the theft of certain products that contain pseudoephedrine a felony; (iv) prohibit itinerant merchants, peddlers, and specialty market operators and vendors from selling products that contain three or more grams of pseudoephedrine, and from selling certain other products; (v) establish the North Carolina Methamphetamine Abuse Task Force (Task Force); and (iv) make appropriations to the Department of Justice (2005-06) and the Task Force (2006-07).

CURRENT LAW: The Controlled Substance Act[1] categorizes by Schedules the different types of controlled substances subject to the Act. *Methamphetamine* is a Schedule II substance. Schedule II controlled substances are those that have (i) a high potential for abuse; (ii) currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and (iii) the abuse of the substance may lead to severe psychic or physical dependence.

Currently sold retail without a prescription, *pseudoephedrine* is a decongestant that comes as a regular tablet and capsule, extended-release (long-acting) tablet and capsule, liquid, and drops for children to take by mouth. Pseudoephedrine may be used to manufacture methamphetamine.

BILL ANALYSIS:

Section 1 of the bill would amend the Controlled Substances Act to add a new section, G.S. 90-94.1, that would:

- Require that products with tablets or caplets containing 30 milligrams or more of pseudoephedrine must be sold in blister packages, rather than in loose bottles. These products may not be made available for self-service retail sale, but must be stored behind a counter or in a locked container that is accessible only to a retail employee.
- Limit the delivery or purchase of products in the form of a tablet or caplet that contain pseudoephedrine to nine grams in any single over-the-counter sale. The limitation does not apply to certain pediatric products and products in the form of gel capsules.
- Provide that a retailer is not penalized for violations if an approved employee training program was conducted and the employee involved in the improper sale received the training.
- Make violation of these provisions a Class 1 misdemeanor for a first offense and Class I felony for a second or subsequent offenses. A Class 1 misdemeanor is punishable by 1 to 45 days of community punishment, assuming no prior convictions. The presumptive range of

[1] Article 5 of Chapter 90 of the General Statutes.

punishment for a Class I felony when there are no prior convictions is 4 to 6 months of community punishment.

Section 2 of the bill would amend G.S. 14-72(b) to make theft of more than nine grams of pseudoephedrine a Class H felony. The presumptive range of punishment for a Class H felony when there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment.

Section 3 of the bill would enact new G.S. 66-254.1 to prohibit itinerant merchants, peddlers, and specialty market operators and vendors from selling products containing three or more grams of pseudoephedrine, products defined as infant formula, and other products defined as a drug under the North Carolina Food, Drug and Cosmetic Act[2].

Section 4 of the bill would establish the Task Force to develop, conduct, or approve training and education programs for employees of establishments where pseudoephedrine is available for sale.

Section 5 of the bill would appropriate $25,000 from the General Fund to the Department of Justice for 2005-06 and $25,000 to the Task Force for 2006-07.

Section 5 of the bill provides that Section 4 (establishment of the Task Force) would become effective September 1, 2005. Section 5 (appropriation provisions) would become effective July 1, 2005. The remainder of the bill would become effective December 1, 2005, and apply to offenses committed on or after that date.

BACKGROUND:

According to the Office of National Drug Control Policy (ONDCP), methamphetamine is a growing threat to North Carolina. It can be manufactured easily in clandestine laboratories (meth labs) using ingredients purchased in local stores. Over-the-counter cold medicines containing ephedrine or pseudoephedrine and other materials are "cooked" in meth labs to make methamphetamine.

Meth labs can be portable and so are easily dismantled, stored, or moved. This portability helps methamphetamine manufacturers avoid law enforcement authorities. Meth labs have been found in many different types of locations, including apartments, hotel rooms, rented storage spaces, and trucks. Methamphetamine labs have been known to be boobytrapped and lab operators are often well armed.

In 2004, 322 meth labs were found in North Carolina. (In 2001, only 34 were found.)

Robin Johnson, counsel to Senate Judiciary II, contributed to this summary.

H1345e1-SMRI

[2] Article 12 of Chapter 106 of the General Statutes.

House Pages

Name Of Committee:_____ Da :: _____

1. Name: William Wadsworth
   County: Lincoln
   Sponsor: Kiser
2. Name: Davis Flory
   County: New Hanover
   Sponsor: McComas
3. Name: Wesley Bell
   County: Moore
   Sponsor: Richard Morgan
4. Name: Samantha Gardner
   County: Johnston
   Sponsor: Leo Daughtry
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED Hines
2. Name: Brad Barefoot } House Sgt @ Arm
3. Name: Jim Womack
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Ratley	SBI
Ann C. Hamlin	SBI
Van W. Shaw	SBI
Mark Gwyn	TBI
Richard Littlehale	Tennessee Bureau of Investigation
Jimmy Ashe	Jackson Co Sheriff
Melissa Lovell	NC DOJ
Jay Chaudhari	NC DOJ
maryAlice Malone	GA Intern for Rep Justus
John Bowdish	self
Karen George	NCACDL
Eran Preston	NCRMA
Teross Young	Food Lion
Mark Gregory	Kerr Drug
Tommy Suter	Wyeth

Joey Giamfortone Schering

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Elkin	NCRMA
Brian Lewis	Covenant w/ NC's Children
Chasta Hamilton	AG's office
Rohith Parasuraman	AG's office
Russ Dubisky	CCPS
Cassandra Skinner	CCPS
Colleen Kochanek	NCACP / NCLEOA
Eddie Jones	YAO
Tom Keith	DA-21
Ron Moore	DA-28[K]
Wm C. McKinney	NC DOJ

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 28, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
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Greg Mahood	NCAOC
Michael Wagner	Fayetteville Observer
Sharf Durhams	Charlotte O
David Ingram	WSJ
Ollie Bowden	NCLEOA
Tom Younce	NC Police Chief's Association
Tom Murray	NCGA Intern
Mark Shook	Watauga County Sheriff
Steven Surratt	NC Narcotic Enf Officers Assoc.
Darien South	Watauga County DA's Office.

VISITOR REGISTRATION SHEET

Judiciary IV
Name of Committee

June 28, 2005
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

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Chad Slagle	Watauga DSS + DEC
Earl Marett	Johnston Co. DSS
Ray Cooper	DOJ
Bruce Thompson	Parker Poe
John Snow	Staff
Josh Mulkey	Governor's Office
Morgan Jackson	DOJ
Noreen Talley	DOJ
Stephen Bryant	DOJ
Eddie Caldwell	NC Sheriffs Assn
[illegible]	S of S
Wes Rosland	NCDOT

VISITOR REGISTRATION SHEET

Judiciary IV — June 28, 2005

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Robertson	AP

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Thursday, June 30, 2005

The House Committee on Judiciary IV met on Thursday, June 30, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Glazier, Vice-Chair Kiser, Representatives Holloway, Justus, Martin, Parmon, Ray and staff attorneys Trina Griffin, Jennifer McGinnis and Steve Rose. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss introduced pages and sergeants-at-arms serving at the meeting.

Chairman Weiss announced that SB 533- CHILD'S ALLOWANCE FROM ESTATE was being taken off the agenda since the bill sponsor, Senator Phil Berger, could not be at the meeting. This bill will be heard at a later meeting.

Mr. Rose presented Senate Bill 666 – PLANNED COMMUNITY ACT AMENDMENT. Discussion followed. Senator Hartsell, Primary Sponsor, spoke on the bill. Representative Glazier moved that SB 666 be given a favorable report. After more discussion, Chairman Weiss called for the vote. The motion was adopted.

Mr. Rose was asked to explain SB 667 - SUBORDINATION AGREEMENT/REGISTRA. AMENDMENTS. Senator Hartsell, Primary Sponsor, spoke on the bill. Discussion followed. Mr. Doug Heron, Legislative Liaison for the North Carolina Bar Association said that the bill has the support of the Bar Association. Representative Glazier moved that SB 667 be given a favorable report. The motion was adopted.

The meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda; SB 666: Committee Report, Bill, Bill Analysis, General Statutes Memo; SB 667: Committee Report, Bill, Bill Analysis, General Statutes Memo; Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, June 30, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

~~**SB 533 - CHILD'S ALLOWANCE FROM ESTATE.**~~
~~**Senator P. Berger**~~

SB 666 - PLANNED COMMUNITY ACT AMENDMENT.
Senator Hartsell

SB 667 - SUBORDINATION AGREEMENT/REGISTRA. AMENDMENTS.
Senator Hartsell

ADJOURNMENT

reported out 6/30/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☐ Committee Substitute for

SB 666 A BILL TO BE ENTITLED AN ACT TO ALLOW ATTORNEYS' FEES TO BE AWARDED TO THE PREVAILING PARTY IN AN ACTION TO ENFORCE PROVISIONS OF THE ARTICLES OF INCORPORATION, DECLARATION, BYLAWS, OR RULES OF A PLANNED COMMUNITY CREATED PRIOR TO JANUARY 1, 1999, IF RECOVERY OF ATTORNEYS' FEES IS ALLOWED IN THE DECLARATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

S 2

SENATE BILL 666*
Second Edition Engrossed 4/19/05

Short Title:	Planned Community Act Amendment.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ALLOW ATTORNEYS' FEES TO BE AWARDED TO THE PREVAILING PARTY IN AN ACTION TO ENFORCE PROVISIONS OF THE ARTICLES OF INCORPORATION, DECLARATION, BYLAWS, OR RULES OF A PLANNED COMMUNITY CREATED PRIOR TO JANUARY 1, 1999, IF RECOVERY OF ATTORNEYS' FEES IS ALLOWED IN THE DECLARATION, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. 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, unless the articles of incorporation or the declaration expressly provides to the ~~contrary.~~ contrary, and G.S. 47F-3-120 (Declaration limits on attorneys' fees) applies to all planned communities created in this State before January 1, 1999. 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 2. This act is effective when it becomes law and applies to actions commenced on or after that date.

SENATE BILL 666:
Planned Community Act Amendment

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 30, 2005
Introduced by:	Sen. Hartsell	**Summary by:**	Steven Rose
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 666 provides statutory authorization for provisions that allow a the prevailing party to collect attorneys' fees in actions to enforce the articles of incorporation, declaration, by-laws or rules of a planned community that was created before January 1, 1999 if those fees are allowed in the instrument that created the planned community.***

The act would be effective when the bill becomes law and applies to actions commenced on or after that date.

CURRENT LAW: North Carolina courts have held that a prevailing party in a lawsuit may not collect their attorneys' fees unless there is specific statutory authorization to do so. The North Carolina Planned Community Act includes in it a specific authorization for the collection of attorneys' fees if the instrument that created the planned community (the "declaration") also allows for the collection of attorneys fees. See G.S. 47F-3-120 below.

In general, Chapter 47E (Planned Community Act) does not apply to planned communities that were created before January 1, 1999. This means that even if the declaration of a pre-1999 planned community allowed for the prevailing party to collect attorneys' fees, there was no statutory authorization to support that.

§ 47F-3-120. Declaration limits on attorneys' fees.

Except as provided in G.S. 47F-3-116, in an action to enforce provisions of the articles of incorporation, the declaration, bylaws, or duly adopted rules or regulations, the court may award reasonable attorneys' fees to the prevailing party if recovery of attorneys' fees is allowed in the declaration.

§ 47F-1-102. Applicability.

(a) This Chapter applies to all planned communities created within this State on or after January 1, 1999, except as otherwise provided in this section.

(b) This Chapter does not apply to a planned community created within this State on or after January 1, 1999:

(1) Which contains no more than 20 lots (including all lots which may be added or created by the exercise of development rights) unless the declaration provides or is amended to provide that this Chapter does apply to that planned community; or

(2) In which all lots are restricted exclusively to nonresidential purposes, unless the declaration provides or is amended to provide that this Chapter does apply to that planned community.

(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, 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.

(d) Notwithstanding the provisions of subsections (a) and (c) of this section, any planned community created prior to January 1, 1999, may elect to make the provisions of this Chapter applicable to it by amending its declaration to provide that this Chapter shall apply to that planned community. The amendment may be made by affirmative vote or written agreement signed by lot owners of lots to which at least sixty-seven percent (67%) of the votes in the association are allocated or any smaller majority the declaration specifies. To the extent the procedures and requirements for amendment in the declaration conflict with the provisions of this subsection, this subsection shall control with respect to any amendment to provide that this Chapter applies to that planned community.

(e) This Chapter does not apply to planned communities or lots located outside this State.

S0666e2-SMRL

Kory Goldsmith, Counsel to Senate Judiciary II Committee, and the staff of the General Statutes Commission, contributed to this summary.

Attachment - SB666
6/30/05 J IV

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: June 8, 2005

RE: **Senate Bill 666 (Planned Community Act Amendment)**

G.S. 47F-1-102(c) lists sections of the North Carolina Planned Community Act that apply to planned communities created within this State before January 1, 1999, the effective date of the Act. This bill adds to that list G.S. 47F-3-120, which allows a court to award attorneys' fees to the prevailing party in an action to enforce the articles of incorporation, declaration, bylaws, or rules of a planned community, if recovery of attorneys' fees is allowed in the declaration. The amendment thus provides statutory authority for the recovery of attorneys' fees in cases where a planned community was created before January 1, 1999, and its declaration expressly authorized the recovery of attorneys' fees. " As a general rule, a party cannot recover attorneys' fees 'unless the recovery is expressly authorized by statute.' " McGinnis Point Owners Association, Inc. v. Joyner, 135 N.C. App. 752, 756, 522 S.E.2d 317, 320 (1999) (quoting Stillwell Enterprises, Inc. v. Interstate Equipment Co., 300 N.C. 286, 289, 266 S.E.2d 812, 814 (1980)).

reported out 6/30/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
SB 667 A BILL TO BE ENTITLED AN ACT TO VALIDATE CERTAIN SUBORDINATION AGREEMENTS AND TO CLARIFY THE LAW ON THE PRIORITY OF INSTRUMENTS REGISTERED IN THE OFFICE OF THE REGISTER OF DEEDS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 667*

Short Title:	Subordination Agreement/Registra. Amendments.	(Public)
Sponsors:	Senator Hartsell.	
Referred to:	Judiciary II.	

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN SUBORDINATION AGREEMENTS AND TO CLARIFY THE LAW ON THE PRIORITY OF INSTRUMENTS REGISTERED IN THE OFFICE OF THE REGISTER OF DEEDS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 39-6.6 reads as rewritten:

"**§ 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~~ subordination agreement 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~~ subordination agreement ~~described in subsection (a) of this section~~ is deemed a conveyance of an interest in real property.

(d) ~~The~~ This section is not exclusive. No subordination agreement that is otherwise valid shall be invalidated by ~~failure to comply with the provisions of~~ this section.

(e) This section applies to a subordination agreement regardless of when the agreement was signed by the party or parties thereto, except that this section does not

apply to an agreement that (i) is the subject of litigation pending on the effective date of this subsection, and (ii) was filed or recorded before October 1, 2003.

(f) In this section:

(1) 'Interest in real property' includes 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.

(2) 'Subordination agreement' means a written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority."

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, bargainer or lesser 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~~ registered instrument or on a separate ~~recorded~~ registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the ~~public record shall be presumed to~~ office of the register of deeds shall have priority based on the order of ~~recordation~~ registration as determined by the time of ~~recordation. If~~ registration, and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the order of recordation~~ the instruments shall be presumed ~~as follows, in order of priority:~~ to have priority as determined by:

(1) The earliest document number set forth on the ~~recorded~~ registered instrument.

(2) The sequential book and page number set forth on the ~~document~~ registered instrument if no document number is set forth on the ~~recorded~~ registered instrument.

The ~~presumptions~~ presumption created by this subsection ~~are~~ is 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~~ registered instrument or on a separate ~~recorded~~ registered instrument duly executed by the party whose priority interest is adversely affected, (i) instruments registered in the

~~public record shall be presumed to~~ office of the register of deeds shall have priority based on the order of ~~recordation~~ registration as determined by the time of ~~recordation. If~~ registration, and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the order of recordation~~ the instruments shall be presumed ~~as follows, in order of priority:~~ to have priority as determined by:

(1) The earliest document number set forth on the ~~recorded~~ registered instrument.

(2) The sequential book and page number set forth on the ~~document~~ registered instrument if no document number is set forth on the ~~recorded~~ registered instrument.

The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

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

SENATE BILL 667:
Subordination Agreement/Registra. Amendments

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 30, 2005
Introduced by:	Sen. Hartsell	**Summary by:**	Steven Rose
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 667 amends the statutory provisions adopted in 2003 relating to subordination agreements. The 2003 act (S.L. 2003-219) provides that a subordination agreement is not required to state the financial terms of the instrument it will be subordinate to. This bill makes the application of those provisions adopted in 2003 applicable to all subordination agreements, regardless of when filed, except those involving pending litigation that were filed before October 1, 2003, the effective date of the 2003 act.***

The act is effective when it becomes law.

BILL ANALYSIS: The bill makes the substantive changes described above. The other changes in the bill are technical or conforming provisions.

BACKGROUND: A subordination agreement is an agreement in which a lien holder agrees to make his or her lien subordinate to another lien. An example is where property is purchased with a purchase money mortgage. The holder of that mortgage may agree to subordinate that lien to a construction loan and permanent financing loan. This act is recommended by the General Statutes Commission at the request of the North Carolina Bankers Association.

S0667e1-SMRL

The staff of the General Statutes Commission contributed to this summary.

Attachment
SB-667
6/30/05
J IV

State of North Carolina
General Statutes Commission

9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: June 8, 2005

RE: **Senate Bill 667 (Subordination Agreement/Registration Amendments)**

This bill is recommended at the request of the North Carolina Bankers Association to validate certain subordination agreements and to clarify the law on the priority of instruments registered in the office of the register of deeds.

Section 1 amends G.S. 39-6.6, which provides that a subordination agreement 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. In a subordination agreement, the holder of a lien on real property agrees to have the lien become junior in priority to a subsequent lien on the property. One example of a subordination agreement involves real property sold subject to a purchase money mortgage, in which the buyer is authorized to subject the property to a subsequent construction mortgage that will have priority over the purchase money mortgage. G.S. 39-6.6 was enacted in 2003 in response to Smith v. Martin, 124 N.C. App. 592, 478 S.E.2d 228 (1996), and MCB Limited v. McGowan, 86 N.C. App. 607, 359 S.E.2d 50 (1987) (opinions added requirement to state interest rate, etc.). The statute became effective October 1, 2003, and applies to subordination agreements filed or recorded on or after that date.

Section 1 extends the applicability of G.S. 39-6.6 to subordination agreements that were filed or recorded before October 1, 2003, to allow them to be enforced according to their terms, as long as they are not the subject of litigation pending on the effective date of the bill. The bill also makes minor stylistic and technical changes throughout G.S. 39-6.6.

Sections 2 and 3 make identical amendments to G.S. 47-18(a) and G.S. 47-20(a) to conform terminology by substituting " registered" and " registration" for " recorded" and " recordation," respectively, and to make other terminology and formatting changes.

Section 4 makes the bill effective when it becomes law.

House Pages

Name Of Committee: JD IV Da : 06/30/05

1. Name: Jessica James
   County: Guilford County
   Sponsor: Earl Jones
2. Name: Antwan Reuben Byum
   County: Edgecombe
   Sponsor: Jean - Farmer - Butterfield
3. Name: Jimberly Butler
   County: Sampson
   Sponsor: Larry M. Bell
4. Name: Brandon Barberry
   County: Lenoir
   Sponsor: William Wainwright
5. Name: Tierra Butler
   County: Sampson County
   Sponsor: Larry Bell

6. DeOndra Peterson
   Sampson County
   Larry M. Bell

Sgt-At-Arms

1. Name: Brad Barefoot
2. Name: Jay Calloway
3. Name: Jim Womack
4. Name:
5. Name:

(6)

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 30, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lisa Martin	NC Home Builders
Mary Thomson	REBIC
Bry Hall	General Statutes Commission
Ryan Pressley	Rep. Blaze - alternate
Doug Heron	NC BAR ASSOC.
[illegible]	NCLTA

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, July 12, 2005

The House Committee on Judiciary IV met on Tuesday, July 12, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Glazier, Vice-Chair Kiser, Representatives Justus, Martin, Parmon, Ray and staff attorneys Trina Griffin, Jennifer McGinnis and Steve Rose. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order at 10:07 a.m. and introduced pages and sergeants-at-arms serving at the meeting.

Chairman Weiss introduced Senator Phil Berger, sponsor of Senate Bill 533- CHILD'S ALLOWANCE FROM ESTATE, who explained the bill. Discussion followed with Ms. Pamela Best, representing the Administrative Office of the Courts, answering a question from Representative Kiser. In response to a question, Mr. Doug Heron, Legislative Liaison for the North Carolina Bar Association, stated that the Bar Association supports the bill. There was more discussion followed by a motion by Representative Ray to give Senate Bill 533 a favorable report. The motion was adopted.

The meeting was adjourned at 10:20 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report, SB533, Bill Analysis, Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, July 12, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

SB 533 - CHILD'S ALLOWANCE FROM ESTATE.
Senator P. Berger

AJOURNMENT

reported out 7/12/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒Committee Substitute for
SB 533 A BILL TO BE ENTITLED AN ACT TO REVISE AND CLARIFY THE LAW PROVIDING FOR A CHILD'S ALLOWANCE FROM A DECEDENT'S ESTATE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 533

Judiciary I Committee Substitute Adopted 3/29/05

Short Title: Child's Allowance From Estate. (Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CLARIFY THE LAW PROVIDING FOR A CHILD'S ALLOWANCE FROM A DECEDENT'S ESTATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 30-17 reads as rewritten:

"**§ 30-17. When children entitled to an allowance.**

Whenever any parent dies ~~leaving~~ survived by any child under the age of 18 years, including an adopted child or a child with whom the widow may be pregnant at the death of her husband, or a child who is less than 22 years of age and is a full-time student in any educational institution, or a child under 21 years of age who has been declared mentally incompetent, or a child under 21 years of age who is totally disabled, or any other person under the age of 18 years residing with the deceased parent at the time of death to whom the deceased parent or the surviving parent stood in loco parentis, every such child shall be ~~entitled, besides its share of the estate of such deceased parent, to~~entitled to receive an allowance of two thousand dollars ($2,000) for ~~its~~ the child's support for the year next ensuing the death of such ~~parent, less, however, the value of any articles consumed by said child since the death of said~~ parent. Such allowance shall be in addition to the child's share of the deceased parent's estate and shall be exempt from any lien by judgment or execution against the property of such parent. The personal representative of the deceased ~~parent,~~ parent shall, within one year after the parent's death, ~~shall~~ assign to every such child the allowance herein provided for; but if there is no personal representative or if he fails or refuses to act within 10 days after written request by a guardian or next friend on behalf of such child, the allowance may be assigned by a magistrate or clerk of court upon application of said guardian or next friend.

If the child resides with the widow of the deceased parent at the time such allowance is paid, the allowance shall be paid to said widow for the benefit of said child. If the child resides with its surviving parent who is other than the widow of the deceased parent, such allowance shall be paid to said surviving parent for the use and benefit of

such child, regardless of whether the deceased died testate or intestate or whether the widow dissented from the will. Provided, however, the allowance shall not be available to an illegitimate child of a deceased father, unless such deceased father shall have recognized the paternity of such illegitimate child by deed, will or other paper-writing. If the child does not reside with a parent when the allowance is paid, ~~it~~ the allowance shall be paid to ~~its~~ the child's general guardian, if any, and if none, to the clerk of the superior court who shall receive and disburse same for the benefit of such child."

SECTION 2. This act becomes effective October 1, 2005, and applies to estates of persons dying on or after that date.

SENATE BILL 533:
Child's Allowance From Estate

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	July 12, 2005
Introduced by:	Sen. Berger of Rockingham	**Summary by:**	Trina Griffin
Version:	Second Edition		Committee Counsel

SUMMARY: Senate Bill 533 would amend the law providing for a child's allowance from the estate of a deceased parent to eliminate the requirement that the amount of the allowance be adjusted by the value of any articles consumed by the child since the time of the parent's death.

CURRENT LAW: Under G.S. 30-17, a dependent child, as defined in the statute as generally being age 21 or younger, is entitled to a child's allowance of $2000 as a priority claim from the estate of a deceased parent. The allowance is intended to provide for the child's support for the first year following the parent's death. This allowance is in addition to the child's share of the estate. The amount of the allowance is reduced by the value of any articles consumed (presumably from the assets of the estate) by the child since the death of the parent. A child's allowance is exempt from judgment or execution for an obligation of the estate. The allowance is paid to the surviving parent or guardian of the child.

BILL ANALYSIS: Senate Bill 533 would delete the requirement that a child's allowance be reduced by the value of any articles consumed by the child since the death of the parent.

EFFECTIVE DATE: This act becomes effective October 1, 2005, and applies to estates of persons dying on or after that date.

O. Walker Reagan, co-counsel to Senate Judiciary I, substantially contributed to this summary.

S0533e2-SMSV

House Pages

Name Of Committee: J- IV Date: 07-12-05

1. Name: Elizabeth Campbell
   County: Gates
   Sponsor: Culpepper
2. Name: Sarah Ritter
   County: Moore
   Sponsor: Morgan
3. Name: Megan Garrit
   County: Alexander
   Sponsor: Mark Hollo
4. Name: Ciara Reaves
   County: Edgecombe
   Sponsor: Joe Tolson
5. Name: Ean Farson
   County: Orange
   Sponsor: Bill Farson

Sgt-At-Arms

1. Name: HINES
2. Name: BAREFOOT
3. Name: AVENT
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 12, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jami Fitzgerald	N.C. Family Policy Council
Doug Heron	NC BAR Association
[signature]	AOC

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
July 19, 2005

The House Committee on Judiciary IV met on Tuesday, July 19, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Glazier, Vice-Chair Kiser, Representatives Culpepper, Daughtry, Earle, Holloway, Justus, Martin, Parmon, Ray and staff attorneys Trina Griffin, Jennifer McGinnis and Steve Rose. Reps. Cunningham, Eddins and Hackney, ex-officio members, were also present. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting. She then asked Vice-Chair Glazier to preside during the hearing on SB 189.

Motion was made to adopt the Proposed Committee Substitute for SB 189, ALL-TERRAIN VEHICLE REGULATION for discussion purposes. The motion was adopted. Vice Chair Glazier recognized Rep. Weiss to speak on SB 189. She welcomed Senator Purcell, sponsor of SB 189, and Mr. Tom Vitaglione, NC Child Fatality Task Force, to the meeting. Representative Weiss gave the background of the bill, and asked Trina Griffin, Staff Attorney, to go through the bill. Senator Purcell then spoke in favor of the bill. Discussion followed. Mr. Vitaglione also spoke in favor of the bill and called attention to letters of support for the bill. Representative Daughtry sent forth an amendment, which was adopted. Representative Parmon moved that the amendment be rolled into a Committee Substitute and that the new committee substitute be given a favorable report, unfavorable to the original Committee Substitute. Discussion followed. The vote was called and the motion was adopted.

Chairman Weiss presided at the remainder of the meeting. Representative Parmon was recognized. She moved to adopt the Proposed Committee Substitute for SB 686 – Meth. Lab Prevention Act, for discussion purposes. The motion was adopted. Chairman Weiss gave a brief background on the bill, which was heard in Judiciary IV June 28th (no vote was taken at that time). Chairman Weiss thanked the sub-committee, chaired by Representative Glazier, for their work and announced that the committee would re-convene after the House session to continue with the bill. Representative Glazier spoke on the bill citing facts and statistics on methamphetamine use around the country. He stated that the Proposed Committee Substitute being presented to the committee is the most comprehensive meth lab prevention bill in the nation.

Chairman Weiss adjourned the morning session and said the committee meeting would continue 15 minutes after the House adjourned.

At 4:40 p.m. Chairman Weiss called the second session of the committee to order stating that the discussion of SB 686 would continue.

Representative Culpepper moved that Proposed Committee Substitute, v. 13 for SB 686, be adopted for discussion purposes. The motion was adopted. Representative Glazier explained the committee substitute. Senator Dalton was recognized for comments. Discussion followed. Mr. Greg McLeod, Department of Justice, was recognized to speak during the discussion. Representative Culpepper sent forth an amendment and moved for its adoption. The amendment was adopted. Amendments #2 and #3 were sent forth by Representative Culpepper, who moved

to adopt Amendment #2, a technical amendment. The motion was adopted. Representative Culpepper moved to adopt Amendment #3. Mr. Andy Ellen, General Counsel for the Retail Merchants Association, spoke on the amendment and said the association took no position on the amendment. Amendment #3 was adopted.

Chairman Weiss recognized Representative Daughtry, who sent forth an amendment. Discussion followed. The amendment failed. A second amendment was sent forth by Representative Daughtry. Discussion followed. Representative Daughtry moved to adopt the amendment. The motion failed.

The Chair recognized Representative Parmon, who sent forth an amendment and explained the amendment. She moved for adoption of the amendment. The motion was adopted.

The Chair recognized Vice-Chair Glazier, who sent forth an amendment, and moved for adoption of the amendment. The amendment was adopted.

Vice-Chair Kiser was recognized and he made several comments on the bill.

Vice-Chair Glazier moved to roll the amendments into a new Committee Substitute and give a favorable report to the new Committee Substitute, unfavorable to the original committee substitute. The motion was adopted.

The meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda; SB 189: Committee Report, Bill, Bill Analysis, Amendment, House Committee Substitute, Letters Supporting SB 189 (3); SB 686: Committee Report, Bill, Bill Analysis, Amendments (7), House Committee Substitute, Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, July 19, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEMS:

SB 189 - ALL-TERRAIN VEHICLE REGULATION.
Senator Purcell

SB 686 - METH. LAB PREVENTION ACT.
Senator Dalton

ADJOURNMENT

reported out 7/19/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☒ House Committee Substitute #1 for

SB 189 A BILL TO BE ENTITLED AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

☒ With a favorable report as to House committee substitute bill 2, which changes the title, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 189

Commerce Committee Substitute Adopted 4/27/05
Third Edition Engrossed 5/16/05
House Committee Substitute Favorable 7/6/05

Short Title: All-Terrain Vehicle Regulation. (Public)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO REGULATE THE SALES AND OPERATIONS OF ALL-TERRAIN VEHICLES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation.

...."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"**§ 20-171.10. Age restrictions.**

(a) No person less than eight years of age shall operate an all-terrain vehicle.

(b) All-terrain vehicles with engine capacity less than 70 cubic centimeter displacement shall be operated only by persons who are eight years of age or older.

(c) All-terrain vehicles with engine capacity from 70 cubic centimeter displacement up to and including 90 cubic centimeter displacement shall be operated only by persons 12 years of age or older.

(d) All-terrain vehicles with engine capacity greater than 90 cubic centimeter displacement shall be operated only by persons 16 years of age or older.

(e) All persons under the age of 16 shall be under the continuous visual supervision of a person 18 years of age or older while operating an all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of eight years.

(2) With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age.

(3) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

(g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at anytime when visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws.

"**§ 20-171.15. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

"**§ 20-171.16. Penalties.**

(a) Any person violating the provisions of G.S. 20-171.10, 20-171.12, or 20-171.14(e) or (f) shall be guilty of a Class 2 misdemeanor.

(b) Any person violating any other provision of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00).

"**§ 20-171.17. Exceptions.**

(a) The provisions of this Part do not apply to any owner, operator, lessor, or renter of a farm or ranch, or that person's employees or immediate family or household members, when operating an all-terrain vehicle while engaged in farming operations.

(b) The provisions of this Part do not apply to any person using an all-terrain vehicle for hunting or trapping purposes if the person is otherwise lawfully engaged in those activities."

SECTION 3. This act becomes effective October 1, 2005.

SENATE BILL 189:
All-Terrain Vehicle Regulation

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	July 19, 2005
Introduced by:	Sen. Purcell	**Summary by:**	Trina Griffin
Version:	PCS to Fourth Edition S189-CSSV-56		Committee Counsel

SUMMARY: ***Senate Bill 189 would provide regulations for the sale and operation of all-terrain vehicles (ATVs) in North Carolina. The Proposed Committee Substitute makes the following substantive changes to the 4th Edition:***

- ***It makes the parent or legal guardian responsible for violations of the age restrictions, rather than the child who operates an ATV in violation of the age restrictions.***
- ***It changes from a Class 2 misdemeanor to an infraction, the penalty for violating the age restrictions, the prohibitions on sellers, and the prohibition regarding use of an ATV on public streets and highways.***
- ***It changes the effective date from October 1, 2005 to December 1, 2005.***

CURRENT LAW: North Carolina does not currently regulate the sale and operation of all-terrain vehicles. All-terrain vehicles are not required to be registered, and operators do not have to be licensed.

BILL ANALYSIS: Senate Bill 189 would regulate all-terrain vehicles in the following ways:

Definition. – The bill would define ATV as a motorized off-highway vehicle designed to travel on 3 or 4 low-pressure tires with a seat designed to be straddled and handlebars for steering.

Age restrictions. –

- No one under age 8 would be permitted to operate an ATV.
- Children ages 8, 9, 10, and 11 would only be permitted to operate ATVs with engine capacity less than 70 cubic centimeter displacement and only with supervision of a person who is 18 or older.
- Children ages 12, 13, 14, and 15 would only be permitted to operate ATVs with engine capacity up to and including 90 cubic centimeter displacement and only with supervision of a person who is 18 or older.
- Only persons who are 16 or older would be permitted to operate an ATV with engine capacity greater than 90 cubic centimeter displacement.

A parent or legal guardian who knowingly permits a child to operate an ATV in violation of these restrictions would be subject to an infraction, punishable by a fine of up to $200.[1] Selling an ATV for use in violation of age restrictions would also be an infraction, subject to the same fine amount.

Passengers. – Operators of ATVs would not be permitted to carry passengers unless the ATV was specifically designed to carry passengers.

Violation of the passenger restriction would be an infraction (fine up to $200).

[1] The default maximum for an infraction is a fine of up to $100.

Equipment requirements. – Every ATV sold or operated in the State would be required to meet the following equipment standards:

- Be equipped with a brake system.
- Be equipped with an effective muffler system.
- Be equipped with a spark arrester.

Violation of equipment requirements would be an infraction (fine up to $200).

Prohibited acts. – Owners and operators of ATVs would be prohibited from doing any of the following:

- Operating an ATV without eye protection and a helmet.
- Authorizing use of an ATV contrary to the provisions in this bill.
- Operating an ATV while under the influence of drugs or alcohol.
- Operating an ATV in a careless and reckless manner so as to endanger persons or property.
- Operating an ATV on a public street, road, or highway, except to cross.
- Operating an ATV on an interstate or limited-access highway.
- Operating an ATV during hours of darkness without displaying a lighted headlamp and taillamp.

Violation of these restrictions would be an infraction (fine up to $200) and would apply to persons regardless of age.

Safety training. – All operators of ATVs who were born on or after January 1, 1990 would be required to possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute. This requirement would be effective October 1, 2006.

Violation of this requirement would be an infraction (fine up to $200).

Exceptions. – The bill would also provide exemptions from ATV regulations for individuals engaged in farming operations and hunting or trapping activities.

EFFECTIVE DATE: The act would become effective December 1, 2005, and apply to offenses committed on or after that date.

Attachment #2
7/19/05 minutes

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 189 Amendment No. 1
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE CSSV-56

(Rep.) Daughtry
Sen.)

1 moves to amend the bill on page 3, line 29 - 35
2 (·) WHICH CHANGES THE TITLE
3 by deleting those lines.
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SIGNED Les Daughtry

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

adopted 7/6/05

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 189

Commerce Committee Substitute Adopted 4/27/05
Third Edition Engrossed 5/16/05
House Committee Substitute Favorable 7/6/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S189-PCS65355-SV-56

Short Title: All-Terrain Vehicle Regulation. (Public)

Sponsors:

Referred to:

February 23, 2005

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE OPERATION OF ALL-TERRAIN VEHICLES BY PERSONS LESS THAN EIGHT YEARS OLD, TO RESTRICT THE OPERATION OF ALL-TERRAIN VEHICLES BY PERSONS EIGHT TO FIFTEEN YEARS OLD BASED ON ENGINE CAPACITY, TO PROHIBIT SELLERS FROM KNOWINGLY SELLING ALL-TERRAIN VEHICLES FOR USE BY PERSONS LESS THAN EIGHT YEARS OLD OR FOR USE BY PERSONS EIGHT TO FIFTEEN YEARS OLD IN VIOLATION OF THE ENGINE CAPACITY LIMITATIONS, TO REQUIRE SAFETY TRAINING FOR ATV OPERATORS, AND TO CREATE INFRACTIONS FOR VIOLATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-4.01 reads as rewritten:

"**§ 20-4.01. Definitions.**

Unless the context requires otherwise, the following definitions apply throughout this Chapter to the defined words and phrases and their cognates:

(1a) Alcohol. – Any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

(1b) Alcohol Concentration. – The concentration of alcohol in a person, expressed either as:

a. Grams of alcohol per 100 milliliters of blood; or

b. Grams of alcohol per 210 liters of breath.

The results of a defendant's alcohol concentration determined by a chemical analysis of the defendant's breath or blood shall be reported to the hundredths. Any result between hundredths shall be reported to the next lower hundredth.

(1c) All-Terrain Vehicle or ATV. – A motorized off-highway vehicle designed to travel on three or four low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control.

~~(1c)~~(1d) Business District. – The territory prescribed as such by ordinance of the Board of Transportation.

...."

SECTION 2. Article 3 of Chapter 20 is amended by adding a new Part to read:

"Part 10C. Operation of All-Terrain Vehicles.

"**§ 20-171.10. Age restrictions.**

(a) It is unlawful for any parent or legal guardian of a person less than eight years of age to knowingly permit that person to operate an all-terrain vehicle.

(b) It is unlawful for any parent or legal guardian of a person less than 12 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity greater than 70 cubic centimeter displacement.

(c) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle with an engine capacity greater than 90 cubic centimeter displacement.

(d) It is unlawful for any parent or legal guardian of a person less than 16 years of age to knowingly permit that person to operate an all-terrain vehicle unless the person is under the continuous visual supervision of a person 18 years of age or older while operating the all-terrain vehicle.

"**§ 20-171.11. Passengers.**

No operator of an all-terrain vehicle shall carry a passenger, except on those vehicles specifically designed by the manufacturer to carry passengers in addition to the operator.

"**§ 20-171.12. Prohibited acts by sellers.**

No person shall knowingly sell or offer to sell an all-terrain vehicle:

(1) For use by a person under the age of eight years.

(2) With an engine capacity of 70 cubic centimeter displacement or greater for use by a person less than 12 years of age.

(3) With an engine capacity of greater than 90 cubic centimeter displacement for use by a person less than 16 years of age.

"**§ 20-171.13. Equipment requirements.**

Every all-terrain vehicle sold, offered for sale, or operated in this State shall meet the following equipment standards:

(1) It shall be equipped with a brake system maintained in good operating condition.

(2) It shall be equipped with an effective muffler system maintained in good working condition.

(3) It shall be equipped with a United States Forest Service qualified spark arrester maintained in good working condition.

"**§ 20-171.14. Prohibited acts by owners and operators.**

(a) No person shall operate an all-terrain vehicle unless the person wears eye protection and a safety helmet meeting United States Department of Transportation standards for motorcycle helmets.

(b) No owner shall authorize an all-terrain vehicle to be operated contrary to this Part.

(c) No person shall operate an all-terrain vehicle while under the influence of alcohol, any controlled substance, or a prescription or nonprescription drug that impairs vision or motor coordination.

(d) No person shall operate an all-terrain vehicle in a careless or reckless manner so as to endanger or cause injury or damage to any person or property.

(e) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle on any public street, road, or highway except for purposes of crossing that street, road, or highway.

(f) Except as otherwise permitted by law, no person shall operate an all-terrain vehicle at anytime on an interstate or limited-access highway.

(g) No person shall operate an all-terrain vehicle during the hours of darkness, from one-half hour after sunset to one-half hour before sunrise and at anytime when visibility is reduced due to insufficient light or atmospheric conditions, without displaying a lighted headlamp and taillamp, unless the use of lights is prohibited by other applicable laws.

"**§ 20-171.15. Safety training and certificate.**

Effective October 1, 2006, every all-terrain vehicle operator born on or after January 1, 1990, shall possess a safety certificate indicating successful completion of an all-terrain vehicle safety course sponsored or approved by the All-Terrain Vehicle Safety Institute.

"**§ 20-171.16. Penalties.**

Any person violating any of the provisions of this Part shall be responsible for an infraction and may be subject to a fine of not more than two hundred dollars ($200.00)."

SECTION 3. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

Attachment #1
JTV 7/19/05 minutes

NORTH CAROLINA SHERIFFS' ASSOCIATION
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS
OF NORTH CAROLINA

President
SHERIFF DANE MASTIN
Wilkes County

1st Vice President
SHERIFF RONALD HEWETT
Brunswick County

2nd Vice President
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Chairman Executive Committee
SHERIFF WORTH HILL
Durham County

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SHERIFF WAYNE V. GAY
Wilson County

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Post Office Box 20049 • Raleigh, N. C. 27619-0049
Suite 120 • 225 Hillsborough Street • Raleigh, N. C
www.ncsheriffs.org

Executive Vice President
and General Counsel
EDMOND W. CALDWELL, JR.

July 12, 2005

REPRESENTATIVE JENNIFER WEISS
NORTH CAROLINA HOUSE OF REPRESENTATIVES
35TH DISTRICT

STATE LEGISLATIVE BUILDING
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HOME ADD
803 TIBBETTS ROCK
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Senator Bill Purcell
Legislative Office Building
Room 625
Raleigh, North Carolina 27603-1096

Re: Senate Bill 189, All-Terrain Vehicle Regulation

Dear Senator Purcell:

Thank you for introducing Senate Bill 189, All-Terrain Vehicle Regulation, and for your continuing efforts to get this legislation enacted into the law. The issue of regulation of all-terrain vehicles was identified early in this legislative session by the Association's Legislative Committee as an important issue, and the North Carolina Sheriffs' Association has adopted a position in support of Senate Bill 189.

Many Sheriffs are well aware of the serious injuries received by citizens in their counties in ATV accidents. In addition, Sheriffs are regularly called upon by citizens complaining about persons driving ATVs, trespassing on the land of others, unlawfully driving ATVs on state roads and careless and reckless driving by operators of ATVs. Senate Bill 189 will go a long way to address these concerns and the North Carolina Sheriffs' Association appreciates your efforts to get this legislation enacted into the law.

Sheriff Tony Perry of Camden County and I were present last week in the House Committee on Children, Youth and Families and were pleased to see the overwhelming support the Bill received in that Committee. Sheriff

Perry is well versed in the problems that your Bill will address, and if we can be of any further assistance or provide any additional information, please do not hesitate to let me know.

Sincerely,

Eddie Caldwell

Edmond W. Caldwell, Jr.
Executive Vice President and General Counsel
North Carolina Sheriffs' Association

EWC: jd

cc: Sheriff Tony Perry, Camden County

Executive Committee Members,
North Carolina Sheriffs' Association

RESENTATIVE JENNIFER WEISS
CAROLINA HOUSE OF REPRESENTATIVES
35TH DISTRICT

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North Carolina Highway Vehicle Association

"...Off-Highway Vehicle Use on Public Lands"

July 7, 2005

To Members of the NC House of Representatives:

Comments concerning support of SB 189 - An Act to Regulate the Sales and Operation of All-Terrain Vehicles on behalf of the members of the North Carolina Off Highway Vehicle (OHV) Association, Inc. (NOVA).

NOVA is a state-wide association representing Off-Highway Vehicle Recreationists across North Carolina. Our mission is to promote the safe and responsible use and management of OHVs which includes ATVs. NOVA strongly supports passage of ATV safety legislation. We have been following the legislation closely and have attended the Senate Committee meetings concerning this bill. We have also made a number of trips to Raleigh in anticipation of attending the House Committee meeting. I regret that I will not be able to attend the meeting on July 6th and would like to submit the following comments to the committee.

Though we support the industry standards for children age 6 to be able to ride ATVs designed for their use. We are willing to support this legislation because we feel NC needs legislation that will require people to be safety certified and will bring awareness to the proper use of ATVs. The single most important thing we can do is to get kids off adult sized ATVs and get them on smaller ATVs designed specifically for their use. Most accidents and injuries come from inappropriate use of ATVs, such as children riding adult sized machines, more than one rider, no training, no safety gear, riding on pavement and the lack of adult supervision which should begin before the children are given the keys to adult sized machines. It is clearly stated in all of the literature, the owners manual and on stickers on adult machines that they are not to be used by children under 16 and if used improperly they are dangerous and will cause death or injury. Adults allowing children to use adult sized ATVs need to be held responsible when children get hurt.

We are also concerned with the education program and the ability of the ATV Safety Institute to provide enough instructors and sights to get everyone certified. We believe that safety training is the most important tool we can use to protect the riders of North Carolina and would support a state training program.

The safety of North Carolina ATV owners and operators is of great concern to us and we are committed to promoting the safe and responsible use and management of ATVs. We believe that reducing injuries associated with ATVs requires passage of ATV legislation, safety training of those using ATVs, proper adult supervision of children using ATVs and providing legal well managed recreation areas for our citizens to use ATVs.

Currently North Carolina is one of only six states with absolutely no statutes addressing ATVs. We have 183,000 ATV owners in NC yet we only provide 120 miles of legal trails for them to use. All of these trails

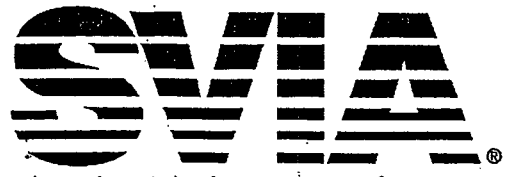
Nancy Minard	John Worsley	Johnny Shields	Brian Sears
President	*V- President*	*Secretary / Treasurer*	*Resource Management*
P.O. Box 1274 Cullowhee, NC 28723 (828) 293-0426	P.O. Box 21812 Greensboro, NC 27420 (336) 274-2790	190 Stormy Cove Sylva, NC 28779 (828) 586-5679	4501 Temple Hill Church Rd. Granite Falls, NC 28630 (828) 396-7230

are located on US Forest Service land. We feel that the state should begin to manage OHV recreation areas where riders can count on well managed areas to safely operate their ATVs. Part of operating ATVs safely is using them on designated trails that were designed for this purpouse. As responsible users of ATVs we feel this is a great family recreation and it should be managed like any other recreation.

We would like to ask that you support SB 189 without raising the age limit to 12. There are many children that are currently riding the appropriate sized ATVs. Kids who are riding responsibly with their families. Kids who are properly trained, properly supervised and riding on youth sized ATVs. These children are learning about responsibility, eye hand coordination, about risk taking and the consequence of their actions. The ATV Safety Institute provides a complete list of criteria which parents can use to judge if their children are ready to ride an ATV. When done properly children can learn a lot about themselves, their family and the outdoors. Perhaps the question we should be asking is not when our kids begin riding but how do we keep them off adult sized machines that were never intended for use by children.

Respectfully submitted:

Nancy Minard, President
The North Carolina OHV Association, Inc.
The Smokey Mountain ORV Club, Member & Past Secretary
The ATV Association, Member
The National Off-Highway Vehicle Conservation Council, Board Member & 2004 Volunteer of the Year



REPRESENTATIVE JENNIFER WEISS
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Members of the North Carolina House of Representatives:

On behalf of the member companies of the Specialty Vehicle Institute of America, I would like to offer this statement in support of SB 189 - An Act to Regulate the Sales and Operations of All-Terrain Vehicles.

The Specialty Vehicle Institute of America (SVIA) is the national not-for-profit trade association representing manufacturers and distributors of ATVs in the United States. Our member companies are AlphaSports, Arctic Cat, Bombardier, Bush Hog, Honda, John Deere, Kawasaki, Patriot, Suzuki and Yamaha. SVIA's principal goal is to promote the safe and responsible use of ATVs.

SVIA strongly supports passage of ATV safety legislation. If enacted, we believe SB 189 will be effective in reducing ATV-related injuries and deaths in North Carolina.

There has been a great deal of discussion regarding the minimum operator age provisions. While age-appropriate ATVs are sold for children age 6 and over and our nationwide training program offers training to children age 6 and over, we believe that the other safety provisions of this bill are so important that we will not oppose the 8-year age limit in this bill so as to not risk having no safety legislation enacted.

The safety of our customers is of paramount importance to the ATV Industry and we are committed to continuing to take appropriate actions to ensure that our products are being used in a safe and proper manner. We believe that reducing injuries associated with ATVs requires a three-pronged approach. One of the essential components is the enactment of state legislation regulating ATV use. Toward this end, we have developed *Model State ATV Legislation*. SB 189 includes all of the safety measures contained in our Model. Currently North Carolina is one of only six states with absolutely no statutes addressing ATVs.

92% of ATV-related fatalities involve behaviors that the Industry warns against in its rider education programs, in all literature and on vehicle labels. These behaviors include riding inappropriately sized ATVs, operating on paved roads, operating without proper safety gear, and operating under the influence of alcohol. SB 189 prohibits all of these behaviors.

Enactment and enforcement of state ATV laws, in combination with rider education and parental supervision when children are riding ATVs, will significantly reduce the number of ATV related injuries and fatalities.

Over the past two decades, ATV manufacturers have made unprecedented efforts to promote safe and responsible ATV use and to deter children under 16 from using adult-size ATVs. The industry has an unparalleled safety education program. Through our ATV Safety Institute ("ASI"), the Industry has developed a hands-on ATV rider training course. Every new ATV

purchaser is offered an incentive to enroll in this industry-sponsored education course that is provided to new buyers free of charge. Other ATV safety educational efforts include nationwide public safety campaigns and inclusion of safety messages in advertisements.

Passage of legislation is the most effective way to reinforce these messages and efforts and try to ensure that riders use these products safely.

A portion of the public will always do the right thing. Another minority of the public will not follow the rules and will not be persuaded to do so by the passage of a state law. But the behavior of the large group of people in between will be influenced by the existence of a reasonable state law regulating their use of ATVs and I urge you to pass SB 189.

Thank you very much for your consideration of these comments on this vital safety issue.

Respectfully submitted:

Kathy R. Van Kleeck
Vice President
Government Relations

reported out 7/25/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
SB 686 A BILL TO BE ENTITLED AN ACT TO ADD PSEUDOEPHEDRINE, A CRITICAL INGREDIENT IN THE MANUFACTURE OF THE ILLEGAL DRUG METHAMPHETAMINE, TO SCHEDULE V OF THE CONTROLLED SUBSTANCES LIST; TO MAKE THE MANUFACTURE OF METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUES RELATING TO THE ABUSE OF METHAMPHETAMINE; AND TO MAKE TECHNICAL CHANGES.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 686

Judiciary II Committee Substitute Adopted 4/26/05
Third Edition Engrossed 4/28/05

Short Title: Meth. Lab Prevention Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO ADD PSEUDOEPHEDRINE, A CRITICAL INGREDIENT IN THE MANUFACTURE OF THE ILLEGAL DRUG METHAMPHETAMINE, TO SCHEDULE V OF THE CONTROLLED SUBSTANCES LIST; TO MAKE THE MANUFACTURE OF METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUES RELATING TO THE ABUSE OF METHAMPHETAMINE; AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-93 reads as rewritten:

"**§ 90-93. Schedule V controlled substances.**

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

(1) Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:

a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.

b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Repealed by Session Laws 1985, c. 172, s. 9.

(3) ~~Stimulants.~~—Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation ~~which~~ that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
a. Repealed by Session Laws 1993, c. 319, s. 7.
b. Pyrovalerone.

(4) Any compound, mixture, or preparation containing any detectable quantity of pseudoephedrine base, its salts or isomers, or salts of isomers; however, this does not include compounds, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form unless pseudoephedrine is the only active ingredient.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding ~~the provisions of~~ G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, a nonpharmacist may complete the actual cash transaction, credit transaction, or delivery of a Schedule V ~~substance, may be completed by a nonpharmacist.~~ substance. A pharmacist may refuse to sell a Schedule V substance until ~~he~~ the pharmacist is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. If the Schedule V substance is pseudoephedrine, then the retail purchaser must provide a photo identification showing the date of birth of the person. The name and address obtained from ~~such~~ the identification shall be entered in the record of disposition to consumers.

(e) No person shall purchase, receive, or otherwise acquire more than nine grams of any mixture, product, or preparation containing the controlled substance described in subdivision (a)(4) of this section within any 30-day period; however, this limit does not apply if the controlled substance is dispensed under a valid prescription.

(f) Notwithstanding this section or any other law, a multistate, wholesale distributor of the controlled substance described in subdivision (a)(4) of this section may continue to warehouse or store this substance in the same manner as the distributor warehoused or stored the substance before the effective date of this subsection.

(g) Any person may request an exemption or conditional exemption from this Schedule for a specific product. The person requesting the exemption has the burden of proof for the exemption. The person shall provide the Commission with evidence that the product has been formulated in a way that serves as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine. This evidence shall include the furnishing of a valid scientific study, conducted by a professional laboratory and evincing professional quality chemical analysis, which is in accordance with uniform parameters set forth in writing by the Commission. This report shall include data, which is documented and can be reviewed, and a clear delineation of methodology.

The Commission shall decide whether to grant an exemption based on a consideration of all of the following factors:

(1) Ease with which the product can be converted into methamphetamine.

(2) Ease with which pseudoephedrine is extracted from the substance and whether it forms an emulsion, salt, or other form.

(3) Whether the product contains a molecular lock that renders it incapable of conversion into methamphetamine.

(4) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine.

(5) Any pertinent data that can be used to determine the risks of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance."

SECTION 2. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings."

SECTION 3.(a) The Legislative Research Commission may study the issues regarding the abuse of methamphetamine precursors used to make methamphetamine and any other issues that are relevant to that topic. In conducting the study, the Commission shall also consider how to address the problems presented by the abuse of methamphetamine, including educational and training programs that focus on curbing the use of methamphetamine in North Carolina. The Commission may also consider any other issues relevant to the study.

SECTION 3.(b) If the study authorized by this section is undertaken, the Legislative Research Commission shall appoint at a minimum the members to the study committee as provided by this subsection.

(1) The President Pro Tempore of the Senate shall appoint the following members:

a. One representative from the Office of the Attorney General.

b. One member of the Senate as appointed by the President Pro Tempore of the Senate.
c. One representative from the North Carolina Association of County Directors of Social Services.
d. One representative from the North Carolina Association of Community Pharmacists.
e. One representative from the Consumer Healthcare Products Association.

(2) The Speaker of the House of Representatives shall appoint the following members:
a. One member of the House of Representatives.
b. One representative from the Office of the Governor.
c. One representative from the North Carolina Retail Merchants Association.
d. One representative from the District Attorney's Association of North Carolina.
e. One representative from the North Carolina Sheriffs' Association, Inc.

SECTION 3.(c) The Legislative Research Commission may make an interim report to the 2005 General Assembly, Regular Session 2006, and shall make its final report to the 2007 General Assembly.

SECTION 3.(d) The Legislative Services Officer shall allocate funds appropriated to the General Assembly for the expenditures of the Legislative Services Commission in conducting this study.

SECTION 4. Sections 1 and 2 of this act become effective December 1, 2005, and apply to offenses committed on or after that date. The remainder of this act becomes effective July 1, 2005.

SENATE BILL 686:
Meth. Lab Prevention Act

BILL ANALYSIS

Committee:	House Judiciary IV Subcommittee on Methamphetamine Lab Prevention	**Date:**	July 19, 2005
Introduced by:	Sen. Dalton	**Summary by:**	Jennifer McGinnis Committee Counsel
Version:	PCS to Third Edition S686-CSRI-19 [v. 13]		

SUMMARY: The PCS for Senate Bill 696 contains the following provisions:

SECTION 1. Creates a new Article in Chapter 90 of the General Statutes titled "Control of methamphetamine precursors," to provide for the "Methamphetamine Lab Prevention Act of 2005."

- **Pseudoephedrine: restrictions on sales** - new G.S. 90-113.52, would:
  1. **PSE behind counter** - provide that pseuodephedrine (PSE) products may not be sold by self-service, but must be stored and sold behind a pharmacy counter if the retail establishment has one, or in establishments without a pharmacy, stored behind a single counter/barrier or in a single locked container and sold at a single designated register.
  2. **Video surveillance/security provisions** - requires that a retailer maintain continuous recorded video surveillance of the portion of the premises where the PSE products are available for sale.
     - **Exemption** – provide that a retailer may request exemption from the surveillance requirement or its conditions from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (Commission) based on a demonstration of substantial economic hardship, physical impracticability, or implementation of substantially equivalent security measures. If the Commission grants an exemption based on economic hardship or physical impracticability it must require implementation of other security measures, including, but not limited to, reliable anti-theft devices. The Commission is authorized to adopt rules in this regard.
  3. **Age/id requirements for purchase** – provide that PSE products may be sold at retail without a prescription only to a person at least 18 years of age. A retailer must require photo id from every purchaser, and for those purchasers the retailer reasonably believes are under 18, the retailer must require a photo id containing a date of birth. The name and address, product description, and volume of PSE purchased must be entered in a record of disposition and signed and attested to by the purchaser on a form approved by the Commission.
  4. **Record-keeping/submitted to SBI** – require that a retailer maintain the record of disposition of transactions for two years from the date of each transaction; that records maintained are not public records but are for the exclusive use of the retailer and law enforcement; and the records must be destroyed after two years.
- **Pseudoephedrine transaction limits** - new G.S. 90-113.53 would:
  1. **Single transaction limits** - prohibit purchase or delivery of more than 2 packages (6 grams total) in any single transaction (unless under valid Rx).
  2. **Monthly limits** – prohibit purchase or delivery of more than 3 packages (9 grams total) of PSE products, (unless under valid Rx).

- **Posting of signs** - new G.S. 90-113.54 would require a retailer to post a sign notifying the public of purchase limits under State law, and records collection for inspection by law enforcement.
- **Training of employees** - new G.S. 90-113.55 would require a retailer to train employees involved in the sale of pseudoephedrine in a program conducted or approved by the Methamphetamine Abuse Task Force.
- **Penalties** – new G.S. 90-113.56 would:
  1. Retailer/criminal provisions: if a retailer willfully or knowingly violates **G.S. 90-113.52** (restrictions on PSE sales (behind counter, surveillance/security, age/id requirements, record-keeping requirements), **90-113.53** (transaction limits), **90-113.54** (sign posting), or **90-113.55** (employee training), the retailer would be guilty of -
     - Class A1 misdemeanor for the first offense
     - Class I felony for a second or subsequent offense. Conviction of a third offense occurring at a single establishment would result in prohibition on PSE sales by retailer at that establishment for a period of six months.
  2. Employees or purchasers who willfully or knowingly violate G.S. 90-113.53 are guilty of a Class A1 misdemeanor for a first offense and a Class I felony for a second or subsequent offense. The provision contains language that provides it is not applicable to bonafide innocent purchasers.
  3. Retailer/civil penalties for failure to train, supervise, or discipline:
     - up to $500.00 for the first violation
     - up to $750.00 for the second violation
     - up to $1,000 for the third violation
- **Civil immunity** – new G.S. 90-11.57 gives retailers or employees who, reasonably and in good faith, report criminal activity involving PSE products to law enforcement, or who refuse to sell PSE to persons reasonably believed to be ineligible to purchase under the law, civil immunity except in cases of willful misconduct. Prohibits retaliation against employees for the making of reports.

- **Product exemption** – new G.S. 90-113.58 allows any person to request an exemption from the Commission for specific PSE products from the requirements of the Article or the warehouse licensing provisions that would be enacted under Sections 2 and 3 of the PCS. The requestor provide various evidence to the Commission concerning the specific product's likelihood of use in methamphetamine production.
- **Preemption of local laws** - new G.S. 90-113.59 states that the act preempts local ordinances/regs re PSE products.
- **Task Force**– new G.S. 90-113.60. creates the Methamphetamine Abuse Task Force (Task Force) consisting of 20 members.

SECTIONS 2 and 3. **Licensing of wholesale distributors provisions** - The PCS would add wholesale distributors of PSE products to the licensing provisions of Article 12A (Wholesale Prescription Drugs) of Chapter 106 (Agriculture). The licensing provisions under the Article contain record-keeping requirements and penalty provisions, among other things. New sections are added to Article 12A to (i) require these distributors to submit monthly reports to law enforcement; and (ii) clarify that with regard to these distributors, the Article's provisions only apply to in-State activities.

SECTION 4. **Aggravating sentencing factor provision** - would amend G.S. 15A-1340.16(d) by adding a new subdivision so that, in a case involving the manufacture of methamphetamine, if the offense was committed in a dwelling that is one of four or more contiguous dwellings, this would be and aggravating factor to be considered in sentencing. (provision in original Senate bill)

SECTION 5. **Larceny theft provision** - would amend G.S. 14-72(b) to make theft of any amount of pseudoephedrine product a Class H felony, except in cases of employee theft which are punishable under G.S. 14-74. The presumptive range of punishment for a Class H felony where there are no prior convictions is 5 to 6 months of community, intermediate, or active punishment. (provision in original House bill)

SECTION 6. Prohibits sales of PSE Products and other drugs at flea markets, etc., (provision in House bill)

SECTION 7. Provides an annual reporting requirement for the Task force beginning Dec. 1, 2005

SECTION 8. - Effective dates .

- **SECTION 1. Sale restrictions - effective Jan. 1, 2006, except for provision concerning creation of task force (effective upon enactment) and product exemption process (effective Sept. 1, 2005)**
- **SECTIONS 2 and 3. Provisions relating to licensing of warehouse distributors of PSE products - effective Jan. 1**
- **SECTION 4. Aggravating sentencing factor - effective Jan. 1**
- **SECTION 5. Larceny theft - effective Jan. 1**
- **SECTION 6. Prohibition on sales of PSE Products and other drugs at flea markets - effective Jan. 1**
- **SECTION 7. Task force reporting requirement - effective Sept. 1**
- **SECTION 8. Effective dates - effective upon enactment**

S0686e3-SMRI-CSRI-19 v 13

Attachment #3
7/19/05
Culpepper #1

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 686

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

S686-ARI-18 [v.1]

Date _____,2005

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

Representative Culpepper

moves to amend the bill on page 9, lines 13 and 14 by inserting between the lines:

SECTION 7. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-736.1. Bail in cases of manufacture of methamphetamine.**

Notwithstanding the provisions of G.S. 15A-736, in determining bond and other conditions of release for a person arrested for any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular, illegal use of methamphetamine. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence:

(1) The person was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine; and

(2) The person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner."

and by renumbering the remaining sections of the bill accordingly.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 686

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

S686-ARI-18 [v.1]

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

Attachment # 4
7/19/05
Culpepper #2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. _____ DATE _____

S. B. No. 686 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

~~Rep.~~)
Sen.) Culpepper

1 moves to amend the bill on page 2, line 7
2 (✓) WHICH CHANGES THE TITLE
3 by inserting after the semi-colon the following
4 words:
5
6 "TO PROVIDE FOR Restricted BAIL
7 FOR CERTAIN PERSONS ARRESTED FOR
8 VIOLATIONS of G.S. 90-95(b)(1a) or
9 G.S. 90-95(d1)(2)b."
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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment #5
7/19/05
Culpepper #3

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 686 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓ S686-CSR1-19 EV13

Rep.) Culpepper
Sen.)

1 moves to amend the bill on page 3, line 17
2 ( ) WHICH CHANGES THE TITLE
3 by striking the word "or" and substituting
4 the word "and"
5
6 and on page 3, lines 17 through 20
7 by deleting the following:
8 " measures. If the Commission grants
9 an exemption based on a showing of
10 substantial economic hardship or
11 physical impracticability, the Commission
12 shall require that the retailer receiving
13 the exemption implement other security
14 measures acceptable to the Commission,"
15 and substituting the phrase "measures,"
16
17
18
19

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment #6
7/19/05
Daughtry #1

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. _____ DATE _____

S. B. No. 686

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

COMMITTEE SUBSTITUTE _____

(Rep.) Daughtry
Sen.)

moves to amend the bill on page 2, lines 26-35

( ) WHICH CHANGES THE TITLE

by rewriting those lines to read:

"Pseudoephedrine products shall not be offered for retail sale but shall ~~only~~ be stored behind and sold from behind a pharmacy counter."

P. 1, lines 4 through 8 by rewriting those lines to read:

"SALES, BUT SHALL BE STORED BEHIND AND SOLD FROM BEHIND A PHARMACY COUNTER; TO PROVIDE"

on p. 2 lines 36 through p. 3 line 22 by deleting those lines and renumbering the remaining subsections accordingly

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment # 7
7/19/05
Daughtry #2

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. _____ DATE _____

S. B. No. 686 ✓ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

(Rep.) DAUGHTRY
Sen.)

moves to amend the bill on page 1, line 2-26

(✓) WHICH CHANGES THE TITLE

by And pg 2 lines 1-6

by re writing those lines to read:

" AN ACT TO PREVENT METHAMPHETAMINE LABS.

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment #8
7/19/05

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/19

S. B. No. _____ Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE Rz S686-CSRJ-9[v.1]

Rep.) Parmon

Sen.)

1 moves to amend the bill on page 4, line 38

2 ( ) WHICH CHANGES THE TITLE

3 by deleting rewriting that line to read:

4 "Sale at that establishment."

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SIGNED Earline N. Parmon

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment #9
7/19/05

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 7/19/05

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

COMMITTEE SUBSTITUTE 5686-CSR1-19[V13]

(Rep.) Glazer
Sen.)

moves to amend the bill on page 5, line 27

( ) WHICH CHANGES THE TITLE

by striking the word "and" and substituting the word "or".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

adopted 7/19/05

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 686

Judiciary II Committee Substitute Adopted 4/26/05
Third Edition Engrossed 4/28/05
PROPOSED HOUSE COMMITTEE SUBSTITUTE S686-PCS65357-RI-19

Short Title: Meth. Lab Prevention Act. (Public)

Sponsors:

Referred to:

March 21, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ALL PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE SHALL NOT BE OFFERED FOR SELF-SERVICE SALES, BUT SHALL BE: (1) STORED BEHIND THE COUNTER OR IN A LOCKED CABINET AND SOLD AT A SINGLE REGISTER IN RETAIL ESTABLISHMENTS WITHOUT A PHARMACY ON THE PREMISES, AND (2) STORED AND SOLD BEHIND A PHARMACY COUNTER IN RETAIL ESTABLISHMENTS WITH A PHARMACY ON THE PREMISES; TO PROVIDE THAT RETAILERS OF PSEUDOEPHEDRINE PRODUCTS MAINTAIN CONTINUOUS SURVEILLANCE OF AREAS INVOLVING PSEUDOEPHEDRINE TRANSACTIONS IN RETAIL ESTABLISHMENTS WITHOUT A PHARMACY; TO PROVIDE THAT RETAILERS MUST REQUIRE IDENTIFICATION FROM PROSPECTIVE PURCHASERS AND MAINTAIN INFORMATION FROM EACH TRANSACTION IN A RECORD AVAILABLE FOR INSPECTION BY LAW ENFORCEMENT; TO PROVIDE FOR PURCHASE LIMITS ON PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE OF TWO PACKAGES PER SINGLE TRANSACTION AND THREE PACKAGES PER MONTH; TO PROVIDE THAT RETAILERS MUST TRAIN EMPLOYEES INVOLVED IN THE SALE OF PSEUDOEPHEDRINE PRODUCTS; TO PROVIDE FOR CRIMINAL AND CIVIL PENALTIES FOR RETAILERS', EMPLOYEES', AND PURCHASERS' VIOLATIONS OF THE ACT; TO ESTABLISH THE NORTH CAROLINA METHAMPHETAMINE ABUSE TASK FORCE; TO REQUIRE THAT WHOLESALE DISTRIBUTORS OF PRODUCTS THAT CONTAIN PSEUDOEPHEDRINE MUST BE LICENSED UNDER ARTICLE 12A OF CHAPTER 106 OF THE GENERAL STATUTES; TO PROVIDE THAT

STEALING A PRODUCT THAT CONTAINS PSEUDOEPHEDRINE IS FELONY LARCENY; TO MAKE THE MANUFACTURE OF METHAMPHETAMINE IN A DWELLING THAT IS ONE OF FOUR OR MORE CONTIGUOUS DWELLINGS AN AGGRAVATING FACTOR; TO PROVIDE FOR RESTRICTED BAIL FOR CERTAIN PERSONS ARRESTED FOR VIOLATIONS OF G.S. 90-95(B)(1A) OR G.S 90-95(D1)(2)B.; AND TO PROHIBIT THE SALE OF DRUGS AS DEFINED UNDER THE NORTH CAROLINA FOOD, DRUG, AND COSMETIC ACT AND PRODUCTS CONTAINING PSEUDOEPHEDRINE BY CERTAIN PERSONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 5D.

"Control of Methamphetamine Precursors.

"**§ 90-113.50. Title.**

This Article shall be known and may be cited as the "Methamphetamine Lab Prevention Act of 2005."

"**§ 90-113.51. Definitions.**

(a) For purposes of this Article, "pseudoephedrine product" means a product containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or isomers, or salts of their isomers.

(b) For purposes of this Article, a "retailer" means an individual or entity that is the general owner of an establishment where pseudoephedrine products are available for sale.

"**§ 90-113.52. Pseudoephedrine: restrictions on sales.**

(a) A product whose sole active ingredient is pseudoephedrine in strength of 30 milligrams or more per tablet or caplet shall not be offered for retail sale loose in bottles but shall be sold only in blister packages.

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner:

(1) In retail establishments that have a pharmacy on the premises, the products shall be stored and sold behind the pharmacy counter.

(2) In retail establishments that do not have a pharmacy on the premises, the products shall be stored behind a single counter or barrier or in a single locked container in such a manner that the products are not accessible by the public and are only accessible by a retail store employee trained in accordance with G.S. 90-113.55. The products shall be sold at a single designated register.

(c) In retail establishments that do not have a pharmacy on the premises, a retailer shall maintain continuous recorded video surveillance of the portion of the premises where the pseudoephedrine products are available for sale in a manner that satisfies the following conditions:

(1) A video camera shall be positioned so that the area where the products are displayed are visible.

(2) Any recording shall have the capability to allow video image playback in real time format.
(3) The images recorded shall be preserved for a minimum of 60 days.
(4) The images recorded shall have a legible date and time notation.
(5) The images recorded shall be available to law enforcement authorities within 48 hours upon request.
(6) A sign or placard shall be posted in a clear and conspicuous manner giving notice to the public of the surveillance.

(d) Any retailer may request from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services an exemption from the surveillance requirement set forth in subsection (c) of this section or any of the conditions listed under subdivisions (1), (2), (3), and (4) of subsection (c) of this section. The person requesting the exemption has the burden of proof, by a preponderance of the evidence, for the exemption. In order to receive an exemption, the person shall provide the Commission with sufficient evidence to demonstrate that: (i) compliance with the requirement would constitute a substantial economic hardship; (ii) compliance with the requirement would be physically impracticable on the premises; and (iii) the retailer has implemented substantially equivalent security measures, including, but not limited to, reliable anti-theft devices. The Commission may adopt rules to implement the provisions of this subsection.

(e) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish photo identification. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons and shall contain a statement in at least 10-point boldface type at the top of every page "NORTH CAROLINA LAW STRICTLY PROHIBITS A SINGLE TRANSACTION PURCHASE OF MORE THAN TWO PACKAGES OF PRODUCTS CONTAINING PSEUDOEPHEDRINE (SIX GRAMS TOTAL), AND NO MORE THAN THREE PACKAGES (NINE GRAMS TOTAL) OF PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE FURNISHING OF

FALSE INFORMATION IN CONNECTION THEREWITH MAY SUBJECT ME TO CRIMINAL PENALTIES."

(f) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for the exclusive use of the retailer and law enforcement. The retailer shall destroy the information after two years from the date of the transactions.

"**§ 90-113.53. Pseudoephedrine transaction limits.**

(a) No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter retail sale more than two packages containing a combined total of more than six grams of any pseudoephedrine products. This limit does not apply if the product is dispensed under a valid prescription.

(b) No person shall purchase at retail more than three packages containing a combined total of more than nine grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

"**§ 90-113.54. Posting of signs.**

A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale stating: "North Carolina law strictly prohibits a single transaction purchase of more than two packages (six grams total) of products containing pseudoephedrine, and no more than three packages (nine grams total) of products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers."

"**§ 90-113.55. Training of employees.**

A retailer shall require that employees of the establishment involved in the sale of pseudoephedrine be trained in a program conducted by or approved by the North Carolina Methamphetamine Abuse Task Force pursuant to G.S. 90-113.60.

"**§ 90-113.56. Penalties.**

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. A retailer convicted of a third offense occurring on the premises of a single establishment shall be prohibited from making pseudoephedrine products available for sale at that establishment.

(b) Any purchaser or employee who willfully and knowingly violates G.S. 90-113.52(e) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. This subsection shall not be construed to apply to bonafide innocent purchasers.

(c) A retailer who fails to train employees in accordance with G.S. 90-113.55, adequately supervise employees in transactions involving pseudoephedrine products, or reasonably discipline employees for violations of this Article, shall be fined up to five

hundred dollars ($500.00) for the first violation, up to seven hundred fifty dollars ($750.00) for the second violation, and up to one thousand dollars ($1,000) for a third or subsequent violation of this section.

"**§ 90-113.57. Immunity.**

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a person reasonably believed to be ineligible to purchase a pseudoephedrine product pursuant to this Article, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of pseudoephedrine products.

"**§ 90-113.58. Product exemption.**

(a) Any person may request from the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services an exemption or conditional exemption from the requirements of this Article or from the requirements of Article 12A of Chapter 106 of the General Statutes for a specific pseudoephedrine product. The person requesting the exemption has the burden of proof, by a preponderance of the evidence, for the exemption. The person shall provide the Commission with evidence that: (i) the product has been formulated in a way that serves as an effective general deterrent to the conversion of pseudoephedrine into methamphetamine; or (ii) conversion of the product into methamphetamine is so cost prohibitive or otherwise ineffective that the product is not being used or is unlikely to be used in the production of methamphetamine. This evidence shall include the furnishing of a valid scientific study, conducted by a professional laboratory and evincing professional quality chemical analysis, which is in accordance with uniform parameters set forth in writing by the Commission. This report shall include data, which is documented and can be reviewed, and a clear delineation of methodology. The Commission may adopt rules to implement the provisions of this section.

(b) In deciding whether to grant an exemption, the Commission shall consider all of the following factors:

(1) Ease with which the product can be converted into methamphetamine.

(2) Ease with which pseudoephedrine is extracted from the substance and whether it forms an emulsion, salt, or other form.

(3) Whether the product contains a molecular lock that renders it incapable of conversion into methamphetamine.

(4) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine.

(5) Any pertinent data that can be used to determine the risks of the substance being used in the illegal manufacture of methamphetamine or any other controlled substance.

"**§ 90-113.59. Preemption.**

This Article shall preempt all local ordinances or regulations governing the sale by a retailer of over-the-counter products containing pseudoephedrine.

"**§ 90-113.60. North Carolina Methamphetamine Abuse Task Force.**

(a) Establishment. – The North Carolina Methamphetamine Abuse Task Force is established. The Task Force shall be located within the Department of Justice for organizational, budgetary, and administrative purposes.

(b) Purpose. – The purpose of the Task Force is to: (i) study issues regarding the abuse of methamphetamine precursors used to make methamphetamine and any other issues that are relevant to that topic; (ii) study the cost, feasibility, and advisability of developing and implementing data tracking mechanisms related to the sale of pseudoephedrine products; (iii) develop and implement programs to curb the use of and access to methamphetamine in North Carolina; (iv) develop training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale; (v) supply or approve training programs for establishments where pseudoephedrine products are available for sale; (vi) develop and implement programs to educate the citizens of the State on the issues of detection and prevention of clandestine methamphetamine laboratories in the State; and (vii) inform and educate the citizens of the State of the restrictions on the sale of pseudoephedrine products set forth in this Article.

(c) Membership. – The Task Force shall consist of 20 members to be appointed as follows:

(1) One representative from the Office of the Governor, as appointed by the Governor.

(2) One representative from the Office of the Attorney General, as appointed by the Attorney General.

(3) Two persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(4) Two persons appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(5) One representative from the North Carolina Association of County Directors of Social Services, as appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(6) One representative from the North Carolina Retail Merchants Association, as appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(7) One representative from the North Carolina Association of Community Pharmacists, as appointed by the Governor.

(8) One representative from the Conference of District Attorneys of North Carolina, as appointed by the Governor.

(9) One representative from the Consumer Healthcare Products Association, as appointed by the Governor.

(10) One representative from the North Carolina Sheriffs' Association, Inc., as appointed by the Governor.

(11) One representative from the Department of Health and Human Services, as appointed by the Governor.
(12) One representative from the State Bureau of Investigation, as appointed by the Governor.
(13) One representative from the North Carolina Narcotic Enforcement Officers' Association, as appointed by the Governor.
(14) One representative from the North Carolina Association of Chiefs of Police, as appointed by the Governor.
(15) One representative from the Department of Agriculture and Consumer Services, as appointed by the Governor.
(16) One representative from the Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services, as appointed by the Governor.
(17) One representative from the National Drug Intelligence Center, as appointed by the Governor.
(18) One representative from the United States Drug Enforcement Agency, as appointed by the Governor.

(d) Terms. – Members shall serve for two-year terms, with no prohibition against being reappointed, except initial appointments shall be for terms as follows:

(1) The Governor shall initially appoint seven members for terms of two years and six members for terms of three years.
(2) The President Pro Tempore of the Senate shall initially appoint two members for a term of two years and one member for a term of three years.
(3) The Speaker of the House of Representatives shall initially appoint two members for a term of two years and one member for a term of three years.
(4) The Attorney General shall appoint one member for a term of three years.

Initial terms shall commence on September 1, 2005.

(e) Chair. – The chair shall be appointed biennially by the Governor from among the membership of the Task Force. The initial term shall commence on September 1, 2005.

(f) Vacancies. – A vacancy on the Task Force or as chair of the Task Force resulting from the resignation of a member or otherwise shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(g) Compensation. – The Task Force members shall receive no salary as a result of serving on the Commission but shall receive per diem, subsistence, and travel expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. When approved by the Task Force, members may be reimbursed for subsistence and travel expenses in excess of the statutory amount.

(h) Removal. – Members may be removed in accordance with G.S. 143B-13.

(i) Meetings. – The chair shall convene the Task Force. Meetings shall be held as often as necessary, but not less than four times a year.

(j) Quorum. – A majority of the members of the Task Force shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the members present at meetings of the Task Force shall be necessary for action to be taken by the Task Force.

(k) Office Space and Staffing. – The Department of Justice shall provide office space and staffing to the Task Force.

(l) Reports. – The Task Force shall annually report on its activities and recommendations, including any legislative proposals to the Joint Governmental Operations Subcommittee on Justice and Public Safety."

SECTION 2. G.S. 106-145.2 reads as rewritten:

"**§ 106-145.2. Definitions.**

The following definitions apply in this Article:

...

(9) Prescription drug. – A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b). Only for the purposes of the provisions of this Article, the term "prescription drug" shall include pseudoephedrine products as defined in G.S. 90-113.51.

..."

SECTION 3. Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-145.13. Submittal of reports by wholesale distributors of transactions involving pseudoephedrine products.**

Every 30 calendar days, a wholesale distributor of pseudoephedrine products licensed as provided in this Article shall submit a report to the State Bureau of Investigation that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The report shall include all sales, distribution, or transactions dealing with products containing pseudoephedrine and controls used to prevent diversion of the products to unauthorized persons. A wholesale distributor shall maintain each monthly report for a period of two years from the date of submittal to the State Bureau of Investigation. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency or the Department of Agriculture and Consumer Services."

SECTION 4. G.S. 15A-1340.16(d) is amended by adding a new subdivision to read:

"(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings."

SECTION 5. G.S. 14-72(b) is amended by adding a new subdivision to read:

"(6) Any product containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients, except that larceny of

any amount of a product containing pseudoephedrine from a retail establishment by an employee of the establishment shall be punishable under G.S. 14-74."

SECTION 6. Article 32 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"**§ 66-254.1. Certain sales prohibited.**

No person who is described by G.S. 66-250(1), (2), (5), or (6) shall sell or offer to sell any product that meets any of the following criteria:

(1) The product contains pseudoephedrine as the sole active ingredient or in combination with other active ingredients.

(2) The product is a drug as defined by G.S. 106-121(6).

Any person who violates this section shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense."

SECTION 7. Chapter 15A of the General Statutes is amended by adding a new section to read:

"**§ 15A-736.1. Bail in cases of manufacture of methamphetamine.**

Notwithstanding the provisions of G.S. 15A-736, in determining bond and other conditions of release for a person arrested for any violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., the magistrate, judge, or court shall consider any evidence that the person is in any manner dependent upon methamphetamine or has a pattern of regular, illegal use of methamphetamine. A rebuttable presumption that no conditions of release on bond would assure the safety of the community or any person therein shall arise if the State shows by clear and convincing evidence:

(1) The person was arrested for a violation of G.S. 90-95(b)(1a) or G.S. 90-95(d1)(2)b., relating to the manufacture of methamphetamine or possession of an immediate precursor chemical with knowledge or reasonable cause to know that the chemical will be used to manufacture methamphetamine; and

(2) The person is in any manner dependent upon methamphetamine or has a pattern of regular illegal use of methamphetamine, and the violation referred to in subdivision (1) of this section was committed or attempted in order to maintain or facilitate the dependence or pattern of illegal use in any manner."

SECTION 8. The North Carolina Methamphetamine Abuse Task Force shall submit the first report required by G.S. 90-113.60, as enacted by Section 1 of this act, on or before December 1, 2005.

SECTION 9. G.S. 90-113.60, as enacted by Section 1 of this act, and Sections 8 and 9 of this act are effective when it becomes law. G.S. 90-113.58, as enacted by Section 1 of this act, becomes effective September 1, 2005. The remainder of Section 1, and Sections 2, 3, 4, 5, 6, and 7 of this act become effective January 1, 2006, and apply to offenses committed on or after that date.

House Pages

Name Of Committee: JUD IV Date: 07-19-05

1. Name: Lauren Smith
   County: New Hanover County
   Sponsor: Daniel McComas
2. Name: Kirby Grady
   County: Duplin County
   Sponsor: Russell Tucker
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Honorary Page:
Thomas Graham
Wake County

Sgt-At-Arms

1. Name: HINES
2. Name: AVENT
3. Name: SPELL
4. Name: _____
5. Name: _____

VISITOR REGISTRATION SHEET

JD IV — 07/19/05 10:00AM

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Salamida	GSK
Lee Hodges	KCLJ
Michael Wagner	Farm Observer

VISITOR REGISTRATION SHEET

JUD IV — 07-19-05 10:00am

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jerry Ratley	SBI
STEVE SURRATT	NC NARCOTICS ENF. OFFICERS ASSOC
Ann C. Hamlin	NCSBI
[illegible]	DA - 21st Dist
Selena Berrier	Child Fatality Task Force
Joey Giamfortone	Schering
Hamy Kaplan	Schering
Steve Mitchell	Novartis
[illegible]	ACLU - NC
Sarah Harger	ACLU - NC
Amy Hobbs	Hobbs & Co

VISITOR REGISTRATION SHEET

JUD IV — 07-19-05 10:00am

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Denise Stanford	Pharmacy Board
Chad Essick	HXMH
Gerald A. Peacock sr.	DMH
SonyaBrown	DMH
Melissa Lovell	NC DOJ
Russ Dubisky	CCPS
Bill Wilson	AARP
Ryan Presley	Intern - Rep. Glazier
MeganGlazier	Intern Rep Glazier
Bill Pound	NC Sentencing
Tom Villaglione	NCCAI

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JERRY RATLEY	SBI
JAY CHANDLER	NC DOJ
Dave Ingram	WSJ
Steve Harrison	AP
Joey Cramerton	Schum
Harry Kaplan	Schum
JOHN GOODMAN	ALLEY ASSOCIATES
Joe Johnson	Insider
Samantha Mozingo	Insider
Pat A. Yancey	ACLU
Sarah Harger	ACLU-NC

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Denise Stanford	Pharmacy Board
Peggy McMyer	GPM inc.
Chad Hinton	Caritas Institute
Lee Hodge	KCCH
Bill Scoggin	KCCH
Robin Paralegal	AG Staff
Melissa Lovell	NC DOJ
Gerald Peacock	DMH
John Keith	DA - 21st CJ
Gary McLeod	NCADA
Ann C. Hamlin	NCSBI

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Eller	NCRMA
Mitchell	Novartis
THOMAS SUTER	WYETH
F/o Stein	DMH/DD/SAS
SonyaBrown	[illegible]
BRUCE WILLIAMS	AGRICULTURE
David McLeod	NCDA&CS
Don Ray	Agriculture
Colleen Kochanek	NCACP/NCLEOA
Kathleen Edwards	UNC-CH Institute of Gov't
John Snow	Staff

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 19, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ryan Presley	intern - Rep. Glazier
megan Glazier	intern - Rep. Glazier
[illegible]	NHO
CRYSTAL HORSON	Covenent
Dianna Jessup	Speaker's office
Angie Whitener	"

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

July 28, 2005

The House Committee on Judiciary IV met on Thursday, July 28, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Glazier, Vice-Chair Kiser, Representatives Justus, Martin, Ray and staff attorneys Trina Griffin and Jennifer McGinnis. A Visitor Registration list is attached and made part of these minutes. Chairman Weiss introduced the pages and sergeants at arms serving at the meeting.

Upon adoption of the motion by Vice-Chair Kiser, the House Proposed Committee Substitute for Senate Bill 61, A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE, was placed before the committee for consideration.

Chairman Weiss called upon Senator Scott Thomas to explain the bill. Senator Thomas explained he had originally introduced this bill during the 2003 Session but time limitations did not allow the bill to the passed. Numerous district attorneys along with the District Attorneys Association had requested a change to the present law that would create a new crime of felony serious injury by vehicle as a Class E felony and would increase the penalty for felony death by vehicle from a Class G to a Class D felony.

Senator Thomas asked Trina Griffin, staff counsel, to present further explanation of the bill.

Representative Karen Ray inquired as to the definition of a "serious injury". Ms. Griffin said it basically would be based on case law; however it is defined in general as the suffering of great pain and/or serious mental injury.

Representative Glazier asked if there was an incarceration note and was told it was about the same as the incarceration note for the DWI bill. He asked if the bill has support from the Sentencing Commission; Senator Thomas said it does.

Representative Kiser moved for a favorable report to the House Proposed Committee Substitute for SB 61; unfavorable to the original bill. Motion unanimously passed.

The meeting adjourned at 10:38 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report, SB 61, Bill Analysis, Committee Substitute, Legislative Incarceration Fiscal Note, Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, July 28, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

SB 61 - FELONY DEATH/SERIOUS INJURY BY VEHICLE.
Senator Thomas

ADJOURNMENT

Reported out 7/28/05
Minutes
7-28-05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
SB 61 A BILL TO BE ENTITLED AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 61

Short Title:	Felony Death/Serious Injury by Vehicle.	(Public)
Sponsors:	Senators Thomas; Apodaca, Bingham, Garwood, Jenkins, Presnell, Smith, Swindell, Tillman, and Weinstein.	
Referred to:	Judiciary II.	

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if he unintentionally causes serious injury to another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and commission of that offense is the proximate cause of the serious injury.

(b) Punishments. – Felony death by vehicle is a Class ~~G~~ D felony. Felony serious injury by vehicle is a Class E felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising

out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

SENATE BILL 61:
Felony Death/Serious Injury by Vehicle

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	July 28, 2005
Introduced by:	Sen. Thomas	**Summary by:**	Trina Griffin
Version:	PCS to First Edition S61-CSSV-57		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 61 would create the new crime of felony serious injury by vehicle as a Class E felony. It would apply when a person unintentionally causes serious injury to another person while engaged in the offense of impaired driving and the impaired driving is the proximate cause of the serious injury. Since the bill creates a new impaired driving offense, the bill also makes conforming changes in the motor vehicle licensing statutes regarding revocation and restrictions upon restoration of one's license. The bill would also increase the penalty for felony death by vehicle from a Class G to a Class D felony.***

CURRENT LAW: G.S. 20-141.4 contains two offenses: felony death by vehicle and misdemeanor death by vehicle.

The elements of felony death by vehicle are:

- The defendant causes the death
- Of another human being
- Unintentionally
- While engaged in the offense of impaired driving or impaired driving of a commercial vehicle; &
- The commission of impaired driving is the proximate cause of the death.

This is a Class G felony with a minimum sentence of 8 months intermediate or active punishment and a maximum sentence of 44 months active punishment.

The elements of misdemeanor death by vehicle are:

- The defendant causes the death
- Of another human being
- Unintentionally
- While committing a violation of any state law or local ordinance applying to the operation of a motor vehicle or the regulation of traffic, other than impaired driving; and
- The commission of that offense is the proximate cause of death.

This is a Class 1 misdemeanor with a minimum sentence of 1-120 days of community, intermediate, or active punishment.

G.S. 20-138.1 is impaired driving. **The elements are:**

- The person drives
- A vehicle
- On a highway or public vehicular area
- While under the influence of an impairing substance, or
- After consuming a sufficient quantity of alcohol that the person has an alcohol concentration of 0.08 or more at any relevant time after the driving.

There are multiple levels of punishment, based upon the weight of certain aggravating and mitigating factors. The punishments range from a minimum imprisonment of 30 days to a maximum imprisonment of 60 days. Fines may range from $200 to $4,000.

G.S. 20-138.2 is impaired driving of a commercial vehicle. The elements are the same as impaired driving except the defendant was operating a commercial vehicle and the threshold alcohol concentration level is 0.04. The sentences are the same as for impaired driving.

BILL ANALYSIS:

Section 1 of the bill does two things. It creates the new offense of felony serious injury by vehicle and it increases the penalty for felony death by vehicle.

Felony serious injury by vehicle would have the following elements:

- The defendant
- Unintentionally causes
- Serious injury
- To another person
- While engaged in the offense of impaired driving or impaired driving of a commercial vehicle; &
- The commission of that offense is the proximate cause of the serious injury.

What qualifies as serious injury is a question of fact, but it has been delineated somewhat by case law to include, "physical injury that causes great pain and suffering... or serious mental injury". It is a lesser standard than 'serious bodily injury', used elsewhere in the criminal statutes.

The offense would be a Class E felony with a minimum sentence of 15 months intermediate or active punishment and a maximum sentence of 98 months active punishment.

The penalty for felony death by vehicle would be increased from a Class G felony to a Class D felony. A Class D felony has a minimum sentence of 38 months active punishment and a maximum sentence of 229 months active punishment.

Section 2 adds felony serious injury by vehicle to the list of "offenses involving impaired driving" in the definitions section of Chapter 20.

Section 3 adds felony serious injury by vehicle to the statute that provides conditions upon which a license may be restored after revocation. A person convicted of felony serious injury by vehicle would be subject to a one-year revocation. Upon restoration of the person's license, this bill would require DMV to place a restriction on the license prohibiting the person from operating the vehicle with an alcohol concentration of greater than 0.00 for three years. This is the same restriction that applies under current law to someone whose license is revoked for a conviction of DWI in a commercial vehicle, driving while less than 21 after consuming alcohol or drugs, felony death by vehicle, and manslaughter or negligent homicide when the offense involves impaired driving.[1]

By comparison, a person who is convicted of driving while impaired (first-time offense) is subject to the following restrictions: (1) a one-year revocation; (2) mandatory ignition interlock for one year if the person's BAC was 0.16 or the person had a prior impaired driving offense within 7 years; and (3) a per se alcohol concentration restriction of 0.04 for three years.

[1] The alcohol concentration restriction of 0.00 applies to each of these offenses, but the time period that the restriction remains on the license differs depending on the offense.

For felony death by vehicle, current law requires permanent revocation; however, DMV may conditionally restore the license after three years. There is no mandatory ignition interlock requirement for a person who is convicted of felony death by vehicle, but there is a requirement that the license have a per se alcohol concentration restriction of 0.00 for seven years.

Sections 4 & 5 make technical and conforming changes to other statutes that reference G.S. 20-141.4.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

BACKGROUND: The North Carolina Sentencing and Policy Advisory Commission conducted an analysis of a prior version of this bill (Senate Bill 687) in April 2003. The language of Senate Bill 61 is identical to the previously proposed Senate Bill 687. The Sentencing Commission found the portion of the bill (§ 20-141.4(a3)) addressing Felony Serious Injury by Vehicle to call for a proposed offense class (Class E felony) consistent with the Commission's Offense Classification Criteria.

As a homicide offense, the portion of the bill addressing Felony Death by Vehicle was found to be of a class for which the Commission did not use Offense Classification Criteria. The Commission did state, however, that the proposed class change would shift this offense from a classification used in the event of serious property loss from the person (Class G felony) to a classification used in cases involving serious infringements on property interest also implicating physical safety concerns by use of a deadly weapon, or involving an occupied dwelling (Class D felony).

Senate
7-28-05

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 61
PROPOSED HOUSE COMMITTEE SUBSTITUTE S61-PCS55271-SV-57

Short Title: Felony Death/Serious Injury by Vehicle. (Public)

Sponsors:

Referred to:

February 7, 2005

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LAWS AGAINST IMPAIRED DRIVING BY INCREASING THE PUNISHMENT FOR FELONY DEATH BY VEHICLE AND CREATING THE OFFENSE OF FELONY SERIOUS INJURY BY VEHICLE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-141.4 reads as rewritten:

"**§ 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; serious injury by vehicle.**

(a) Repealed by Session Laws 1983, c. 435, s. 27.

(a1) Felony Death by Vehicle. – A person commits the offense of felony death by vehicle if he unintentionally causes the death of another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2 and commission of that offense is the proximate cause of the death.

(a2) Misdemeanor Death by Vehicle. – A person commits the offense of misdemeanor death by vehicle if he unintentionally causes the death of another person while engaged in the violation of any State law or local ordinance applying to the operation or use of a vehicle or to the regulation of traffic, other than impaired driving under G.S. 20-138.1, and commission of that violation is the proximate cause of the death.

(a3) Felony Serious Injury by Vehicle. – A person commits the offense of felony serious injury by vehicle if he unintentionally causes serious injury to another person while engaged in the offense of impaired driving under G.S. 20-138.1 or G.S. 20-138.2, and commission of that offense is the proximate cause of the serious injury.

(b) Punishments. – Felony death by vehicle is a Class ~~G~~ D felony. Felony serious injury by vehicle is a Class E felony. Misdemeanor death by vehicle is a Class 1 misdemeanor.

(c) No Double Prosecutions. – No person who has been placed in jeopardy upon a charge of death by vehicle may be prosecuted for the offense of manslaughter arising

out of the same death; and no person who has been placed in jeopardy upon a charge of manslaughter may be prosecuted for death by vehicle arising out of the same death."

SECTION 2. G.S. 20-4.01 reads as rewritten:

"...

(24a) Offense Involving Impaired Driving. – Any of the following offenses:

a. Impaired driving under G.S. 20-138.1.

b. Death or serious injury by vehicle under G.S. 20-141.4 when conviction is based upon impaired driving or a substantially similar offense under previous law.

c. First or second degree murder under G.S. 14-17 or involuntary manslaughter under G.S. 14-18 when conviction is based upon impaired driving or a substantially similar offense under previous law.

d. An offense committed in another jurisdiction which prohibits substantially similar conduct prohibited by the offenses in this subsection.

e. A repealed or superseded offense substantially similar to impaired driving, including offenses under former G.S. 20-138 or G.S. 20-139.

f. Impaired driving in a commercial motor vehicle under G.S. 20-138.2, except that convictions of impaired driving under G.S. 20-138.1 and G.S. 20-138.2 arising out of the same transaction shall be considered a single conviction of an offense involving impaired driving for any purpose under this Chapter.

g. Habitual impaired driving under G.S. 20-138.5.

A conviction under former G.S. 20-140(c) is not an offense involving impaired driving.

..."

SECTION 3. G.S. 20-19(c3) reads as rewritten:

"(c3) Restriction; Revocations. – When the Division restores a person's drivers license which was revoked pursuant to G.S. 20-13.2 (a), G.S. 20-23 when the offense involved impaired driving, G.S. 20-23.2, subdivision (2) of G.S. 20-17(a), subdivision ~~(1) or (9)~~(1), (3), or (9) of G.S. 20-17(a) when the offense involved impaired driving, or this subsection, in addition to any other restriction or condition, it shall place the applicable restriction on the person's drivers license as follows:

(1) For the first restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration of 0.04 or more at any relevant time after the driving;

(2) For the second or subsequent restoration of a drivers license for a person convicted of driving while impaired, G.S. 20-138.1, or a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired under G.S. 20-138.1, that the person not operate a vehicle with an alcohol concentration greater than 0.00 at any relevant time after the driving;

(3) For any restoration of a drivers license for a person convicted of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), felony serious injury by vehicle, G.S. 20-141.4(a3), manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, or a revocation under this subsection, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving;

(4) For any restoration of a drivers license revoked pursuant to G.S. 20-23 or G.S. 20-23.2 when the offense for which the person's license was revoked prohibits substantially similar conduct which if committed in this State would result in a conviction of driving while impaired in a commercial motor vehicle, G.S. 20-138.2, driving while less than 21 years old after consuming alcohol or drugs, G.S. 20-138.3, felony death by vehicle, G.S. 20-141.4(a1), or manslaughter or negligent homicide resulting from the operation of a motor vehicle when the offense involved impaired driving, that the person not operate a vehicle with an alcohol concentration of greater than 0.00 at any relevant time after the driving.

In addition, the person seeking restoration of a license must agree to submit to a chemical analysis in accordance with G.S. 20-16.2 at the request of a law enforcement officer who has reasonable grounds to believe the person is operating a motor vehicle on a highway or public vehicular area in violation of the restriction specified in this subsection. The person must also agree that, when requested by a law enforcement officer, the person will agree to be transported by the law enforcement officer to the place where chemical analysis is to be administered.

The restrictions placed on a license under this subsection shall be in effect (i) seven years from the date of restoration if the person's license was permanently revoked, (ii) until the person's twenty-first birthday if the revocation was for a conviction under G.S. 20-138.3, and (iii) three years in all other cases.

A law enforcement officer who has reasonable grounds to believe that a person has violated a restriction placed on the person's drivers license shall complete an affidavit pursuant to G.S. 20-16.2(c1). On the basis of information reported pursuant to G.S. 20-16.2, the Division shall revoke the drivers license of any person who violates a

condition of reinstatement imposed under this subsection. An alcohol concentration report from an ignition interlock system shall not be used as the basis for revocation under this subsection. A violation of a restriction imposed under this subsection or the willful refusal to submit to a chemical analysis shall result in a one-year revocation. If the period of revocation was imposed pursuant to subsection (d) or (e), any remaining period of the original revocation, prior to its reduction, shall be reinstated and the one-year revocation begins after all other periods of revocation have terminated."

SECTION 4. G.S. 20-168(b) reads as rewritten:

"(b) While actually engaged in maintenance or construction work on the highways, but not while traveling to or from such work, drivers of vehicles owned or operated by the State or any political subdivision thereof are exempt from all provisions of this Article except:

(1) G.S. 20-138.1. Impaired driving.
(2) Repealed by Session Laws 1983, c. 435, s. 28.
(3) G.S. 20-139.1. Procedures governing chemical analyses; admissibility; evidentiary provisions; controlled-drinking programs.
(4) G.S. 20-140. Reckless driving.
(5) Repealed by Session Laws 1983, c. 435, s. 38.
(6) G.S. 20-141. Speed restrictions.
(7) G.S. 20-141.3. Unlawful racing on streets and highways.
(8) G.S. 20-141.4. Felony and misdemeanor death by ~~vehicle.~~vehicle; serious injury by vehicle."

SECTION 5. G.S. 15A-830(a) reads as rewritten:

"(a) The following definitions apply in this Article:

...

(7) Victim. – A person against whom there is probable cause to believe one of the following crimes was committed:
   a. A Class A, B1, B2, C, D, or E felony.
   b. A Class F felony if it is a violation of one of the following: G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3); 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.2; 14-43.3; 14-190.17; 14-190.19; 14-202.1; 14-277.3; 14-288.9; or 20-138.5.
   c. A Class G felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-51; 14-58; ~~14-87.1; or 20-141.4.~~ or 14-87.1.
   d. A Class H felony if it is a violation of one of the following: G.S. 14-32.3(a); 14-32.3(c); 14-33.2, or 14-277.3.
   e. A Class I felony if it is a violation of one of the following: G.S. 14-32.3(b); 14-34.6(b); or 14-190.17A.
   f. An attempt of any of the felonies listed in this subdivision if the attempted felony is punishable as a felony.
   g. Any of the following misdemeanor offenses when the offense is committed between persons who have a personal relationship as

defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a); 14-34; 14-134.3; or 14-277.3."

SECTION 6. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

REVISED

BILL NUMBER: Senate Bill 61 (First Edition)

SHORT TITLE: Felony Death/Serious Injury by Vehicle

SPONSOR(S): Senator Thomas

FISCAL IMPACT

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

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10
EXPENDITURES:					
HIGHWAY FUND					
Transportation	$18,388	-	-	-	-
GENERAL FUND					
Correction+					
Recurring	-	$432,799+	$1,255,931+	$2,072,553+	$3,065,809+
Non-Recurring	**There are no available prison beds during this timeframe. This note assumes that contractual beds will be used in the short run. In the long term, the state will need to construct new cells at an average cost of $86,957 per bed.**				
Judicial (Recurring)	$13,559+	$24,406+	$25,626+	$26,907+	$28,252+
TOTAL EXPENDITURES:	$31,947+	$457,205+	$1,281,557+	$2,099,460+	$3,094,061+
ADDITIONAL PRISON BEDS*	-	12+	41+	70+	102+
POSITIONS: (cumulative)	-	5+	16+	28+	41+

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

EFFECTIVE DATE: December 1, 2005

+*Costs reflect only the impact of enhancing the penalty for Felony Death by Vehicle. There would be an indeterminate number of additional prison beds and costs to the Administrative Office of the Courts (AOC) and the Department of Correction (DOC) as a result of the new offense of Felony Serious Injury by Vehicle. See Assumptions and Methodology for details.*

**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: This bill amends G.S. 20-141.4 to raise the offense class of Felony Death by Vehicle from felony Class G to Class D and creates a new offense, Felony Serious Injury by Vehicle, punishable as a Class E felony. Both offenses require that the offender be engaged in the offense of Driving While Impaired.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each criminal penalty bill. The Commission assumes for each bill that increasing criminal penalties does not have a deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume savings due to deterrent effects for this bill or any criminal penalty bill.

Offenders that could be convicted of Felony Serious Injury by Vehicle due to this bill are eligible under current law to be convicted of Assault with a Deadly Weapon Inflicting Serious Injury, also a Class E felony. The Sentencing Commission does not have data reflecting the number of these convictions that involve the perpetration of a Driving While Impaired offense. To the extent that these offenders are already being charged and convicted of a Class E felony, the impact upon prison population and the court system due to this new offense would be reduced. However, an informal poll of district attorneys conducted by AOC in 2002 indicated that no charges other than DWI are currently being brought against these defendants.

Department of Transportation/Highway Fund

The State Automated Driver License System (SADLS) will require the following modifications to implement the new offense of Felony Serious Injury by Vehicle:

- Logic for new conviction codes and business rules to enforce these new codes.
- New AOC code process logic.
- New suspension codes and the business rules to enforce these new codes.
- Changes to the correspondence system for new correspondence produced.
- Alcohol Restriction for new codes and business rules to enforce these new codes.

The Drivers License Section estimates 206 hours of programming, testing, and implementation at $80/hour for a total of $16,720, plus ITS charges totaling $1,668. Total nonrecurring expenditures for the Drivers License Section are estimated to be $18,388.

Department of Correction – Division of Prisons

This bill could increase the number of prison beds needed by three means: 1) raising the offense class of Felony Death by Vehicle from Class G to Class D; 2) creating the new offense of Felony Serious Injury by Vehicle; and 3) inducing prosecutors to seek convictions for Felony Death by Vehicle in cases in which they presently seek a conviction for Involuntary Manslaughter (a Class F felony). Due to lack of historical data, the Sentencing Commission cannot estimate any impact on prison population resulting from the creation of a new offense or a change in prosecutorial behavior. Throughout this fiscal note, the + symbol is used to indicate the potential for additional, unquantifiable prison beds and expenditures resulting from those aspects of this bill.

1) Felony Death by Vehicle

This bill would increase the penalty for Felony Death by Vehicle from Class G to Class D, resulting in an increase in both sentence length and activation rate. While a judge may impose an intermediate sanction for a Class G felony, a Class D felony requires an active sentence. In FY 2003-04, there were 35 convictions for Felony Death by Vehicle. The Sentencing Commission projects that raising the offense classification to Class D would increase the number of prison beds needed each year, resulting in the need for 102 new beds by FY 2009-10.

2) Felony Serious Injury by Vehicle

The new offense of Felony Serious Injury by Vehicle would be punishable as a Class E felony. Division of Motor Vehicles (DMV) data indicates that there were 625 alcohol-related crashes that caused serious injury as defined by DMV in 2003, a continued decline from previous years. Although AOC has provided an estimate of the number of charges that could result from these accidents, it is not possible to estimate the number of convictions that might result from those charges. If, for example, there were two convictions for this offense per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed in the first year and two additional beds in the second year. The statewide average annual operating cost for each additional prison bed in FY 2006-07 is projected to be $24,740.

3) Change in Prosecutorial Behavior

The bill would raise Felony Death by Vehicle to an offense class above Involuntary Manslaughter (G.S. 14-18), a Class F felony. It is possible that, as a result of this bill, some convictions for Involuntary Manslaughter would instead be for Felony Death by Vehicle, increasing sentence length and ensuring an active sentence. In FY 2003-04, there were 83 convictions for Involuntary Manslaughter. There is no data on the number of these convictions that involved the commission of a Driving While Impaired offense. As such, the Sentencing Commission cannot project the number of offenders that might be convicted of Felony Death by Vehicle if it were classified above Involuntary Manslaughter.

The chart on the next page compares the projected inmate population to available prison bed capacity system-wide and shows any population increases caused by a specific bill. Based on the most recent population projections and estimated available prison bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon and beyond.* That means the number of beds needed (row five) is always equal to the projected additional inmates due to a bill (row four).

Rows four and five in the chart show the impact of the increased penalty for Felony Death by Vehicle proposed by this bill. As shown in bold in the chart, the Sentencing Commission estimates that this specific legislation will add *at least* 102 inmates to the prison system by the end of FY 2009-10. There will be additional beds required by the creation of the new Class E offense of Felony Serious Injury by Vehicle, but the number cannot be determined.

	June 30 2006	June 30 2007	June 30 2008	June 30 2009	June 30 2010
1. Projected No. Of Inmates Under Current Structured Sentencing Act[1]	38,106	39,021	39,864	40,750	41,668
2. Projected No. of Prison Beds (DOC Expanded Capacity)[2]	37,015	37,911	38,807	38,807	38,807
3. No. of Beds Over/Under No. of Inmates Under Current Structured Sentencing Act	-1,091	-1,110	-1,057	1,943	-2,861
4. No. of Projected Additional Inmates Due to this Bill[3]	-	**12+**	**41+**	**70+**	**102+**
5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill[3]	-	12+	41+	70+	102+

POSITIONS: It is anticipated that *at least* 41 positions would be needed to supervise the additional inmates housed under this bill by 2009-10. This position total includes security, program, and administrative personnel at a ratio of one employee for every 2.5 inmates. This ratio is the combined average of the last five prisons opened by DOC and two prisons under construction. Two of the prisons were medium custody and five were close custody.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes look at the impact of a bill through FY 2010. However, there is information available on the impact of this bill in later years. The chart below shows the additional inmates due to this bill, the projected available beds, and required beds due only to this bill each year.

	2010-11	2011-12	2012-13	2013-14
Inmates Due to This Bill*	134+	155+	163+	169+
Available Beds (over/under)	-3,787	-4,692	-5,574	-6,505
New Beds Needed (minimum)*	-3,921	-4,847	-5,737	-6,674

* Only part of the impact is quantifiable.

[1] The Sentencing and Policy Advisory Commission prepares inmate population projections annually. The projections used for incarceration fiscal notes are based on January 2005 projections. These projections are based on historical information on incarceration and release rates under Structured Sentencing, crime rate forecasts by a technical advisory group, probation and revocation rates, and the decline (parole and maxouts) of the stock prison population sentenced under previous sentencing acts.

[2] Projected number of prison beds is based on beds completed, under construction, or authorized for construction as of December 2004. The number of beds is based on DOC operating at Expanded Operating Capacity (EOC).

[3] Criminal penalty bills effective December 1, 2005 will not affect prison population and bed needs until FY 2006-07 due to the lag time between when an offense is committed and an offender is sentenced.

DISTRIBUTION OF BEDS: After analyzing the proposed legislation, the Department of Correction estimates the following distribution of beds as needed under this bill:

32% Close Custody
60% Medium Custody
8% Minimum Custody

CONSTRUCTION: Construction costs for new prison beds, as listed in the following chart, are based on estimated 2004-05 costs for each custody level as provided by the Office of State Construction and the Department of Correction. An inflation rate of five percent per year is applied to future years. *The costs assume stand-alone facilities; single cells for close custody and dormitories for medium and minimum.*

Custody Level	Minimum	Medium	Close
Construction Cost Per Bed 2004-05	$45,500	$73,500	$98,500

The cost to construct each bed required by this bill is shown in the Fiscal Impact Table on page one of this note. This cost is for 2006-07 and assumes that funds to construct prison beds should be budgeted three years in advance since building a prison typically requires three years for planning, design, and construction.

The total cost to construct new beds to accommodate the 102 inmates this bill is projected to add to the prison system by FY 2009-10 is estimated to be $8.87 million. DOC would need to begin construction of these beds in FY 2006-07. By FY 2013-14, 169 beds would be needed due to this legislation. **The cost to construct the additional 67 beds beginning in FY 2010-11 would be $7.08 million.** These figures represent a FY 2004-05 average base cost per bed of $78,873 adjusted for inflation at a rate of five percent annually. This base cost per bed is a weighted average of the cost per bed for each of the three custody levels as shown above.

OPERATING: Operating costs are based on actual 2003-04 costs for each custody level as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical etc.) and administrative overhead costs for the Department and the Division of Prisons. A three percent annual inflation rate will be added each year to the base costs for FY 2003-04 shown below and included in the recurring costs estimated in the Fiscal Impact Table on page one.

Daily Inmate Operating Cost 2003-04

Custody Level	Minimum	Medium	Close	Statewide Average
Daily Cost Per Inmate (2003-04)	$49.34	$65.59	$82.46	$62.03

Department of Correction – Division of Community Corrections

Offenders convicted of Felony Serious Injury by Vehicle (felony Class E) in Prior Record Levels I and II could receive an intermediate rather than active punishment. Probation officers in the Division of Community Correction supervise offenders with intermediate sanctions at an estimated cost of $10.94 per day for the first six months and $1.87 per day thereafter. This cost estimate is based on the average cost and duration of intensive probation, the most common intermediate sanction. In FY 2003-04, 51 percent of Class E felons received an intermediate punishment, and the average length of supervision was 36 months.

If, for example, there were two convictions for Felony Serious Injury by Vehicle, and the rate of intermediate sentences was the same as the overall rate for Class E in 2003-04, one offender would receive an intermediate punishment. Costs to the Division of Community Corrections (DCC) for that offender would be an estimated $2,338 in the first year and $683 per year in the second and third years. As with active sentences, costs would begin in FY 2006-07 due to the lag time between charge and conviction.

As a Class G offense, individuals convicted of Felony Death by Vehicle can receive intermediate sanctions administered by DCC. Because Class D offenders cannot receive intermediate sanctions, there would be short-term cost savings to DCC if Felony Death by Vehicle were reclassified as a Class D offense. However, in the long term DCC would incur the cost of post-release supervision for Class D offenders. To the extent that offenders charged with Felony Serious Injury by Vehicle are presently being charged with a lesser offense with a higher non-active sentence rate, the same would hold true for that offense.

Judicial Branch

For most criminal penalty bills, AOC 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.

Felony Death by Vehicle

AOC estimates that it would cost the courts an additional $23,244 to process charges for Felony Death by Vehicle if it were reclassified as a Class D offense. According to AOC data, in calendar year 2004 a total of 65 defendants were charged with Felony Death by Vehicle. Of these charges, AOC estimates that four percent were settled by jury trial, sixty percent by guilty plea, and the remaining charges were dismissed. Based on the costs of jury fees, attorney preparation, and court time, AOC estimates the cost to dispose of these cases as Class G felonies at $20,458. The cost of indigent defense, based on an estimated indigency rate of 39 percent, would total an additional $4,077.

Using overall disposition rates for Class D felony cases in 2004, AOC estimates that, if 65 defendants were charged as Class D felons for Felony Death by Vehicle, seven percent would be disposed of by jury trial, 56 percent by plea, and the remaining charges would be dismissed. The cost to process these cases, based on the costs of jury fees, attorney preparation, and time in court, would be $39,518. At an estimated indigency rate of 39 percent, costs of indigent defense would

total an additional $8,261. The increase in cost to process Felony Death by Vehicle as a Class D offense reflects presumed increases in trial rates, trial length, attorney preparation time, and time to handle pleas. This figure does not include the cost of processing dismissals, any additional appeals that could result from the punishment enhancement, nor any increase in prosecution for violent habitual felony. The figures in the box on the front page reflect the difference in total cost ($23,244), inflated at a rate of three percent annually, and adjusted in FY 2005-06 to reflect only the seven months for which the bill would be effective.

Felony Serious Injury by Vehicle

Based on the costs of jury fees, time in court, attorney preparation, and indigent defense, the total cost to process an estimated 120 additional Class E charges as a result of this new felony would equal $54,721 per year. North Carolina Division of Motor Vehicles data reveals that in calendar year 2003 there were 354 alcohol-related crashes resulting in at least one fatality. During that same time period, AOC data shows that there were 68 charges for Felony Death by Vehicle, indicating that approximately 19.2 percent of alcohol-related fatal crashes in 2003 resulted in charges for Felony Death by Vehicle. According to DMV data, there were 625 alcohol-related crashes involving serious injury in 2003. If the same proportion of these 625 accidents were to result in charges for Felony Serious Injury by Vehicle, the court system could expect to handle approximately 120 charges of this new Class E felony. Using the average disposition rates of all Class E felonies during 2004, these 120 charges would result in 6 jury trials, 52 pleas, and 62 dismissals. The cost of attorney preparation time and time in court to process these charges would equal an estimated $45,814. At an indigency rate of 39 percent, additional costs for indigent defense would equal $8,907. Since no actual data exists regarding charges for this new offense and we do not know how these cases are currently charged, these figures are not included in the box on the front page.

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

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Mills and Aaron Paul



APPROVED BY: James D. Johnson, Director Fiscal Research Division
DATE: March 29, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices

Rm. 415

House Pages

Name Of Committee: JT IT Date: 7-28-05

11:0

1. Name:	Koneisha Macon	Megan Toms
County:	Forsyth	Forsyth
Sponsor:	Larry Womble	Larry Womble
2. Name:	Elizabeth Hill	Khristina Cunningham
County:	Catawba	Mecklenburg Cty
Sponsor:	Mark Hollo	Pete Cunningham
3. Name:	Jessica Arwin	Daryll Vercent
County:	Vance	Mecklenburg
Sponsor:	Jim Crawford	Pete Cunningham
4. Name:	Kelsey Cameron	
County:	Onslow	
Sponsor:	Robert Grady	
5. Name:	Adam Everett	
County:	Catawba	
Sponsor:	Mark Hilton	

Sgt-At-Arms

1. Name: BRAD BAREFOOT
2. Name: JIM WOMACK
3. Name: FRANK PREVD
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

JULY 28, 2005 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Leanne Winner	NCSBA
Matt Osborne	AOC
Russ Dubisky	CCPS
Naadia Bhatti	Poyner + Spruill
DAVID BARNES	Poyner + Spruill LLP
Brian Bartholomew	Poyner + Spruill

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, August 2, 2005

The House Committee on Judiciary IV met on Tuesday, August 2, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice Chair Glazier, Vice-Chair Kiser, Representatives Justus, Martin, Parmon, and staff attorneys Trina Griffin, and Jennifer McGinnis. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order at 10:00 and introduced pages and sergeants-at-arms serving at the meeting.

Chairman Weiss introduced Representative Glazier to speak on SB1124 – BREACH CONFID. FILES/SCHOOL BD. EMPLOYEES f/k/a/ ENVIRONMENTAL TECHNICAL CORRECTIONS. Without objection, Representative Glazier moved to adopt the Proposed Committee Substitute for discussion purposes. The motion was adopted and he explained the bill. Discussion followed with Ms. Leanne Winner, a lobbyist representing the NC School Boards Association, answering questions of the members.

Representative Martin moved that the Proposed Committee Substitute for SB 1124 be given a favorable report, unfavorable to the original bill. The motion was adopted.

The meeting was adjourned at 10:18 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report, Bill, Bill Analysis, House Committee Substitute, Listing of Pages, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, August 2, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

SB 1124 – BREACH CONFID. FILES/SCHOOL BD. EMPLOYEES f/k/a/ ENVIRONMENTAL TECHNICAL CORRECTIONS
Senator Albertson

ADJOURNMENT

reported 8/3/05

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
SB 1124 A BILL TO BE ENTITLED AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1124

Short Title:	Environmental Technical Corrections.	(Public)
Sponsors:	Senator Albertson.	
Referred to:	Agriculture/Environment/Natural Resources.	

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATED TO THE ENVIRONMENT, ENVIRONMENTAL HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90A-55 reads as rewritten:

"**§ 90A-55. State Board of Sanitarian Examiners; appointment and term of office.**

(a) Board Membership. – The Board shall consist of nine members: the Secretary of Environment and Natural Resources, or the Secretary's duly authorized representative, one public-spirited citizen, one environmental sanitation educator from an accredited college or university, one local health director, a representative of the Division of Environmental Health ~~Division~~ of the Department of Environment and Natural Resources, and four practicing sanitarians who qualify by education and experience for registration under this Article, three of whom will represent the Western, Piedmont, and Eastern Regions of the State as described more specifically in the rules adopted by the Board.

(b) Term of Office. – Each member of the State Board of Sanitarian Examiners shall be appointed by the Governor for a term of four years. ~~Members of the Board serving on October 1, 1982, shall serve until the expiration of the terms for which they were appointed.~~ As the term of each current member expires, the Governor shall appoint a successor in accordance with the provisions of this section. If a vacancy occurs on the Board for any other reason than the expiration of a member's term, the Governor shall appoint a successor for the remainder of the unexpired term. No person shall serve as a member of the Board for more than two consecutive four-year terms.

(c) The Environmental Health ~~Section,~~ Section of the North Carolina Public Health Association, Inc., shall submit a recommended list of Board member candidates to the Governor for his consideration in appointments.

(d) The Governor may remove an appointee member for misconduct in office, incompetency, neglect of duty, or other sufficient cause."

SECTION 2. G.S. 102-1.1 reads as rewritten:

"**§ 102-1.1. Name and description in relation to 1983 North American Datum.**

From and after the date and time the North Carolina Geodetic Survey Section in the Division of Land Resources ~~Division~~ of the Department of Environment and Natural Resources receives from the National Geodetic Survey, official notice of a complete, published definition of the North American Datum of 1983 including the State plane coordinate constants applicable to North Carolina, the official survey base for North Carolina shall be a system of plane coordinates to be known as the "North Carolina Coordinate System of 1983," said system being defined as a Lambert conformal projection of the "Geodetic Reference System (GRS 80 Ellipsoid)" having a central meridian of 79°- 00' west from Greenwich and standard parallels of latitude of 34° – 20' and 36° – 10' north of the equator, along which parallels the scale shall be exact. All coordinates of the system are expressed in metres, the x coordinate being measured easterly along the grid and the y coordinate being measured northerly along the grid. The U.S. Survey Foot, 1 meter = 39.37 inches or 3.2808333333 feet, shall be used as a conversion factor. The origin of the coordinates is hereby established on the meridian 79° – 00' west from Greenwich at the intersection of the parallels 33° – 45' north latitude, such origin being given the coordinates x = 609,601.22 metres, y = 0 metres. The precise position of said system shall be as marked on the ground by triangulation or traverse stations or monuments established in conformity with the standards adopted by the National Geodetic Survey for first- and second-order work, whose geodetic positions have been rigidly adjusted on the North American Datum of 1983, and whose plane coordinates have been computed on the system defined. Whenever plane coordinates are used in the description or identification of surface area or location within this State, the coordinates shall be identified as "NAD 83", indicating North American Datum of 1983, or as "NAD 27", indicating North American Datum of 1927."

SECTION 3. G.S. 105-277.7(a) reads as rewritten:

"(a) Creation and Membership. – The Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of North Carolina State University. The Director of the Agricultural Extension Service of North Carolina State University shall serve as the chair of the Board. The Board shall consist of the following additional members, to serve ex officio:

(1) A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.

(2) A representative of the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources, designated by the Director of that Division.

(3) A representative of the Agricultural Extension Service at North Carolina Agricultural and Technical State University, designated by the Director of the Extension Service.

(4) A representative of the North Carolina Farm ~~Bureau,~~Bureau Federation, Inc., designated by the President of the Bureau.

(5) A representative of the North Carolina Association of Assessing Officers, designated by the President of the Association.

(6) The Director of the Property Tax Division of the North Carolina Department of Revenue or the Director's designee.
(7) A representative of the North Carolina Association of County Commissioners, designated by the President of the Association.
(8) A representative of the North Carolina Forestry Association, designated by the President of the Association."

SECTION 4. G.S. 105-296(j) reads as rewritten:

"(j) The assessor must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor must review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's present-use value classification when the owner submits the requested information unless the information discloses that the property no longer qualifies for present-use value classification. When a property's present-use value classification is reinstated, it is reinstated retroactive to the date the classification was revoked and any deferred taxes that were paid as a result of the revocation must be refunded to the property owner.

In determining whether property is operating under a sound management program, the assessor must consider any weather conditions or other acts of nature that prevent the growing or harvesting of crops or the realization of income from cattle, swine, or poultry operations. The assessor must also allow the property owner to submit additional information before making this determination."

SECTION 5. G.S. 113-56.1 reads as rewritten:

"**§ 113-56.1. Overtime compensation for forest fire fighting.**

The Department shall, within funds appropriated to the Department, provide overtime compensation to the professional employees of the Division of Forest Resources ~~Division~~ involved in fighting forest fires."

SECTION 6. G.S. 113-60.32(1) reads as rewritten:

"(1) 'Fire fighter' means an employee of the Division of Forest Resources ~~Division~~ of the Department of Environment and Natural Resources who engages in fire suppression duties."

SECTION 7. G.S. 113-291.10(a)(4) reads as rewritten:

"(4) The Director of the Division of Soil and Water Conservation ~~Division~~ of the Department of Environment and Natural Resources, or a designee;".

SECTION 8. Section 14 of S.L. 2004-163 reads as rewritten:

"**SECTION 14.** Notwithstanding G.S. 164-10, the Revisor of Statutes shall not codify any of the provisions of this act. The Revisor of Statutes shall set out the text of Sections 1 through 13 of this act as a note to G.S. 143-214.7 and may make notes concerning this act to other sections of the General Statutes as the Revisor of Statutes deems appropriate. The Revisor of Statutes shall set out the text of the Stormwater Management Rule, as defined in Section ~~11~~ 12 of this act, and the text of Section 6 of the temporary rule adopted by the Environmental Management Commission on 10 October 2002 as notes to G.S. 143-214.7."

SECTION 9. This act is effective when it becomes law.

SENATE BILL 1124:
Breach Confid. Files/School Bd. Employees f/k/a/ Environmental Technical Corrections

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	August 2, 2005
Introduced by:	Sen. Albertson	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition S1124-CSSV-62		

SUMMARY: The Proposed Committee Substitute for Senate Bill 1124 would create two new Class 3 misdemeanor offenses regarding the disclosure or examination of information contained in a school board employee's confidential personnel file.

CURRENT LAW: Unless otherwise provided by law, all information contained in the personnel files of local boards of education are confidential and are available for inspection only by the following individuals:

- The employee, applicant for employment, or former employee (or his authorized agent).
- The superintendent and other supervisory personnel.
- Members of the local board of education and the board's attorney.
- A party by authority of a subpoena or proper court order.

However, a superintendent may, in his discretion, or shall, at the direction of the Board of Education, allow a personnel file to be inspected a by any person or corporation if the board has determined that the release of information is essential to maintaining the integrity of the board or to maintaining the level of services provided by the board. Prior to releasing the information or making the file available, the superintendent must prepare a memorandum setting forth the circumstances requiring the disclosure of the information.

Current law provides substantially similar confidentiality provisions regarding the personnel files of county and municipal employees. However, those statutes also authorize a criminal penalty for the disclosure or examination of those files, whereas the local school board statute does not. Specifically, a person with authorized access to the personnel files of county or city employees, who willfully and maliciously allows another person to have access to the file or information therein, is guilty of a Class 3 misdemeanor. A person who is not authorized to have access to those files who knowingly and willfully examines, removes, or copies the files is also guilty of a Class 3 misdemeanor. In both instances, the penalty may only be a fine of up to $500.

BILL ANALYSIS: The Proposed Committee Substitute for Senate Bill 386 would create two new Class 3 misdemeanor offenses with regard to files of local school board employees that mirror the offenses that already exist with regard to the disclosure or examination of confidential personnel files of county and city employees.

Under this bill, the following would constitute a Class 3 misdemeanor, punishable only by a fine of up to $500:

- A public official or employee who knowingly, willfully, and with malice permits another person to have access to information in the personnel file of a local school board employee (except as otherwise authorized by law).
- Any person who is not authorized to have access to a personnel file of a local school board employee who knowingly and willfully examines, removes, or copies any portion thereof.

EFFECTIVE DATE: This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1124
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1124-PCS65364-SV-62

Short Title: Breach Confid. Files/School Bd. Employees. (Public)

Sponsors:

Referred to:

March 24, 2005

A BILL TO BE ENTITLED

AN ACT TO IMPOSE A PENALTY FOR BREACHING THE CONFIDENTIALITY OF SCHOOL EMPLOYEE PERSONNEL FILES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-321 reads as rewritten:

"**§ 115C-321. Confidential information in personnel files; access to information.**

(a) All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to ~~employment;~~employment.

(2) The superintendent and other supervisory ~~personnel;~~personnel.

(3) Members of the local board of education and the board's ~~attorney;~~attorney.

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.

(b) Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining

the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record.

(c) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not in excess of five hundred dollars ($500.00).

(d) Any person, not specifically authorized by this section to have access to a personnel file, who shall knowingly and willfully examine in its official filing place, remove, or copy any portion of a personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined not in excess of five hundred dollars ($500.00)."

SECTION 2. This act becomes effective December 1, 2005, and applies to offenses committed on or after that date.

House Pages

Name Of Committee: Judiciary (4) Date: 8-2-05

1. Name: Etta Stewart
   County: Wake
   Sponsor: Rep. Ross
2. Name: Amanda Wujcik
   County: Wake
   Sponsor: Rep. Harrold
3. Name: Tesia Oakley
   County: Wake
   Sponsor: Rep. Cleveland
4. Name: David Parham
   County: Catawba
   Sponsor: Rep. Hilton
5. Name: Andrew Argentieri
   County: Cumberland
   Sponsor: Rep Glazier

Sgt-At-Arms

1. Name: Brad Barefoot
2. Name: Fred Hines
3. Name: Jim Womack
4. Name:
5. Name:

VISITOR REGISTRATION SHEET

JUDICIARY IV — August 2, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Nancy Thompson	NCIC
Molly Ryan	NCSBA
R. Paul Wilms	NCHBA
Leanne Winner	NCSBA
Kathleen Edwards	UNC-CH Institute of Gov't
Mary Alice Malone	Rep Justus's Intern
Michael Stading	Holt & York
Kim Hibbard	NCUM
Elizabeth Dalton	NCCBI
Rolf Buzzard	NCBI
MARSHALL MAUNEY	MDA

VISITOR REGISTRATION SHEET

J-IV — 08-02-05

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Cann	BPM&L
Rick Zechini	NE AR

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

August 9, 2005

10:00 a.m.

The House Committee on Judiciary IV met on Thursday, August 9, 2005, in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Glazier, Vice-Chair Kiser, Representatives Earle, Holloway, Justus, Martin, Parmon and Ray. Staff attorneys Steve Rose and Jennifer McGinnis were also present. A copy of the Agenda and the Visitor Registration list are attached and made part of these minutes. Chairman Weiss introduced the pages and sergeants-at-arms serving at the meeting.

Upon motion by Vice-Chair Glazier, the proposed committee substitute for House Bill 1323, A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION, was placed before the committee for discussion and consideration.

Chairman Weiss called upon Chief Justice Beverly Lake to explain the history behind the proposed legislation. He explained that in 2002, the NC Actual Innocence Commission was established to study issues relating to people being wrongly convicted of crimes they did not commit. That Commission recommended the establishment of the NC Innocence Inquiry Commission. This commission's duty would be to conduct inquiries into "claims of factual innocence" by a living person who has been convicted of a felony in the North Carolina courts who has credible, verifiable evidence of innocence that has not been previously presented. The defendant must sign a statement waiving procedural safeguards and privileges and agree to cooperate with the Commission. The defendant has the right to advice of counsel before signing such agreement. Victims and families must be given at least 30 days notice prior to the proceedings. Commission's proceedings and records would be confidential and exempt from open meetings and public records laws unless the inquiry was referred to Superior Court. If there is probable cause to believe actual innocence exists, the case would be referred to a three-judge panel in Superior Court for evidentiary hearing. If actual innocence is established by clear and convincing evidence, the court can order the defendant released. Also, the decision is final and not subject to further review unless it is not unanimous and has to be reviewed by the Supreme Court.

He also explained that North Carolina would be ahead of every nation with this type of legislation to weed out claims of innocence before the courts. It would save waste of time and money. He further explained the proposed legislation has the unanimous support of chief justices, prosecuting attorneys, law enforcement officers, victim advocates and law professors.

Representative Glazier, one of the bill's primary sponsors, was called upon to further explain the proposed committee substitute in detail. He explained the defendant had to be living, only felonies would be considered and the request could only be considered on evidence not previously submitted. This commission would have seven (7) members. If the panel rules unanimously, the charges are dismissed. If not unanimous, the request would go to the Supreme Court from there.

After Representative Glazier, Chairman Weiss called upon counsel, Steve Rose, to further explain the bill.

Chris Mumma, NC Actual Innocence Commission, shared the findings and concerns from the NC Actual Innocence Commission.

Representative Earle asked if there was opposition, who does the screening and the fiscal impact.

Ms. Mumma explained there were some concerns but most groups had come to the table to work them out. The Commission would proceed with the screening and students from the law schools would assist with the screening process. The fiscal aspect would be for the staff of approximately $350,000 in recurring costs.

The Chair called upon Mr. C. Branson Vickory, III, District Attorney 8th District, who explained the recommendations made by the NC Conference of District Attorneys.

The meeting adjourned at 11:00 a.m. to reconvene at 1:00 p.m. on August 9th, Room 415, Legislative Office Building.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 1323, Bill Analysis, Proposed Committee Substitute, Analysis of Discussions Relating to the Innocence Inquiry Commission Bill, NC Conference of District Attorneys Innocence Commission Recommendations, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, August 9, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

HB 1323 – ESTABLISH NC INNOCENCE INQUIRY COMMISSION
Representatives Glazier, Hackney and Cunningham

ADJOURNMENT

H 1

HOUSE BILL 1323*

Short Title:	Establish NC Innocence Inquiry Commission.	(Public)
Sponsors:	Representatives Glazier, Hackney, Cunningham (Primary Sponsors); Alexander, B. Allen, Bordsen, Dickson, Fisher, Goforth, Haire, Harrison, Insko, Jones, Lucas, Luebke, Miller, Parmon, Rapp, Ross, Tucker, Wainwright, Weiss, and Womble.	
Referred to:	Judiciary IV.	

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is credible, verifiable

evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(2) "Commission" means the North Carolina Inquiry Commission established by this Article.

(3) "Director" means the Director of the North Carolina Inquiry Commission.

(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission but shall be located under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"**§ 15A-1463. Membership; chair; meetings; quorum.**

(a) The Commission shall consist of seven voting members appointed by the Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be a superior court judge, one shall be a prosecuting attorney, one shall be a victim advocate, one shall be engaged in the practice of criminal defense law, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department. The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint alternate Commission members to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the Chief Justice shall make a good faith effort to appoint members with different perspectives of the justice system. The Chief Justice shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2006, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote unless specified otherwise by this Article.

"**§ 15A-1464. Terms of members; compensation; expenses.**

(a) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and two appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this section, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"**§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The determination of whether to grant a formal inquiry regarding a claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the defendant were currently being tried for the charge for which the defendant is claiming innocence.

(g) If, at any point during an inquiry, the defendant refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"**§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All seven voting members of the Commission shall participate in that vote.

If five or more of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than five of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the defendant disclosed through formal inquiry or Commission proceedings shall be disclosed to the defendant and the defendant's counsel, if the defendant has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the

superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the senior resident superior court judge shall request the Chief Justice appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the defendant. The defendant may not assert any privilege or prevent a witness from testifying. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent defendant of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the defendant has proved by clear and convincing evidence that the defendant is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

"**§ 15A-1470. No right to further review of decision by Commission or three-judge panel; defendant retains right to other postconviction relief.**

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the defendant's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or , for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 5. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

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

HOUSE BILL 1323:
Establish NC Innocence Inquiry Commission

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	August 9, 2005
Introduced by:	Reps. Glazier, Hackney, Cunningham	**Summary by:**	Steven Rose
Version:	PCS H1323-CSRL-45		Committee Counsel

SUMMARY: The Proposed Committee Substitute for HB 1323 would establish the NC Innocence Inquiry Commission, a 7-member body appointed by the Chief Justice. Its duty would be to hear claims of factual innocence by persons convicted of felonies. If at least four members of the Commission conclude there is sufficient evidence to merit judicial review, the Chief Justice shall appoint a 3-judge panel of the Superior Court to hold a hearing on the evidence. If the panel unanimously rules that it has been proven by clear and convincing evidence that the defendant is innocent, the panel shall dismiss the charges. If the 3-judge panel votes 2 to 1 for a finding of innocence, the inquiry is referred to the Supreme Court for the final decision based on the record. Decisions of the Commission and the 3-judge panel could not be appealed, with the exception of the 2 to 1 decision in favor of innocence of the 3-judge panel. Effective when the bill becomes law.

CURRENT LAW: Under existing law, a person convicted of a felony may appeal to an appellate court based on errors other than evidence, or the defendant may make a motion for appropriate relief from the trial court.

In 2002 Chief Justice I. Beverly Lake Jr. established the NC Actual Innocence Commission to study issues related to people being wrongly convicted of crimes they did not commit. That Commission recommended the Commission that would be established by this bill.

BILL ANALYSIS: The bill establishes the NC Innocence Inquiry Commission. It creates a new Article 92 in Chapter 15A. *Section 1 of bill.*

Administration. The Commission would be housed administratively within the Department of Justice and supported by the Administrative Office of the Court, but it would be an independent body. The seven members of the Commission would be appointed by the Chief Justice. Of those, there must be a Superior Court judge, a prosecutor, a victim advocate, a criminal defense attorney, and a layperson. The judge would be chair. Once the terms are fully phased in, the members would serve staggered 3-year terms. They would be limited to 2 consecutive terms. They would hire an attorney as Director and could hire other staff. *New G.S. 15A-1461 through 15A-1465.*

Claims of Factual Innocence. The Commission's chief duty would be to conduct inquiries into "claims of factual innocence," defined in the bill as a claim on behalf of a living person convicted of a felony in the NC courts, asserting that person's complete innocence of criminal responsibility for that felony and for any other reduced level of criminal responsibility related to the crime. There must be credible, verifiable evidence of innocence that has not previously been presented. *G.S. 15A-1460 and 15A-1466.*

Initiating an Inquiry. Anyone could present a claim of factual innocence to the Commission. The Commission would have discretion whether to conduct an inquiry. It could not conduct an inquiry unless it received a signed statement from the defendant waiving procedural safeguards and privileges and agreeing to cooperate with the Commission. The defendant has the right to advice of counsel before signing the agreement and during the inquiry. *G.S. 15A-1467.*

Commission's Proceedings. In conducting the inquiry, the Commission would have the discretion whether to conduct public hearings. The victim of the crime (or if the victim is dead, the victim's next of kin) must be notified if feasible at least 30 days prior to proceedings of the full Commission. The victim would have a limited right to attend non-public hearings. After hearing the evidence the Commission would vote, with all members present, on whether there is sufficient evidence of factual innocence to merit judicial review. If four members voted "yes," the Commission would forward its opinion, as well as the record in support of it, to the senior resident Superior Court judge of the district of original jurisdiction in the case. If four members do not vote "yes," the Commission would document its opinion and send the document to the clerk of court in the district of original jurisdiction, with copies to the DA and the senior resident Superior Court judge. Evidence of criminal acts, professional misconduct, or other wrongdoing would be referred to the appropriate authority. Evidence favorable to the defendant would be disclosed to the defendant and defendant's counsel. Due diligence would be used to notify the victim of the result. *G.S. 15A-1468.*

Open Meetings and Public Records. The Commission's proceedings and records would be confidential and exempt from the Open Meetings and Public Records laws, except that if the Commission votes that there is sufficient evidence of factual innocence, the supporting records of that finding become public when referred to Superior Court. That includes all files and materials considered by the Commission and transcripts of its hearings. If the Commission votes there is not sufficient evidence of factual innocence, the records stay closed. *G.S. 15A-1468.*

Postcommission 3-Judge Panel. If four members find sufficient evidence and the Commission sends the case to Superior Court, that judge must request the Chief Justice to appoint a 3-judge panel of trial judges who have not had previous involvement in the case. The senior of those judges would preside. The 3-judge panel would hear evidence in a special session of Superior Court in the district of original jurisdiction of the case. The State would have 60 days after the hearing is set to file a response to the Commission's opinion. The DA would represent the State at the hearing. The panel could compel the testimony of any witness, including the defendant. The defendant has the right to be present at the hearing and be represented by counsel, but may not assert any privilege or prevent a witness from testifying. The victim would be notified 30 days before the hearing. The 3-judge panel would have to determine whether there is "clear and convincing evidence" (higher than "by the greater weight of the evidence" but lower than "beyond a reasonable doubt") that the defendant is innocent of the charges. If the 3 judges are unanimous in saying "yes," they are required to dismiss the charges. If they are not unanimous, they must deny relief. However, if two judges of the panel find the defendant is innocent, the decision must be reviewed by the Supreme Court. *G.S. 15A-1469.*

Panel's Decision is Final. The bill provides that the decisions of the Commission and the 3-judge panel are final and not subject to further review by appeal, certification, writ, or motion, except in the 2 to 1 situation described above. But a claim of factual innocence through the Commission would not adversely affect the defendant's rights to other post-conviction relief. *G.S. 15A-1470.*

Sections 2, 3, 4, and 5 of the bill add referring a case to the Commission as an option in seeking and granting relief under existing statutes. Section 6 adds the Commission to the public bodies exempted from the Open Meetings Law. Section 7 makes the Commission records of investigations exempt from the Public Records Law. Section 8 clarifies that the Commission is not subject to the APA. Section 9 requires annual reports by the Commission to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Counsel. Section 10 makes the act effective when it becomes law.

H1323e1-SMRL

William R. Gilkeson and Walker Reagan, co-counsel to the Senate Judiciary I Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1323*
PROPOSED COMMITTEE SUBSTITUTE H1323-CSRL-45 [v.7]

8/8/2005 9:12:11 PM

Short Title: Establish NC Innocence Inquiry Commission. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.
(3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.
(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission, but shall be located under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"**§ 15A-1463. Membership; chair; meetings; quorum.**

(a) The Commission shall consist of seven voting members appointed by the Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be a superior court judge, one shall be a prosecuting attorney, one shall be a victim advocate, one shall be engaged in the practice of criminal defense law, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department. The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint alternate Commission members to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the Chief Justice shall make a good faith effort to appoint members with different perspectives of the justice system. The Chief Justice shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2006, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote.

"**§ 15A-1464. Terms of members; compensation; expenses.**

(a) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and two appointments shall be for three-year

terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this section, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"**§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The determination of whether to grant a formal inquiry regarding a claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of factual innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant agrees to waive his or her procedural safeguards and privileges to the extent necessary for inquiry into the defendant's claim of innocence, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement and for the purpose of advising the defendant throughout the formal inquiry.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the defendant were currently being tried for the charge for which the defendant is claiming innocence.

(g) If, at any point during an inquiry, the defendant refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"**§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All seven voting members of the Commission shall participate in that vote.

If four or more of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than four of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the defendant disclosed through formal inquiry or Commission proceedings shall be disclosed to the defendant and the defendant's counsel, if the defendant has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the

superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the senior resident superior court judge in the district of original jurisdiction shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's opinion. The Chief Justice shall then appoint the three-judge panel and the senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel.

(d) The senior resident superior court judge shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent defendant of all or a portion of the costs of the proceedings.

(e) The three-judge panel shall, after reviewing the Commission's opinion, findings of fact and record, conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the defendant. The defendant may not assert any privilege or prevent a witness from testifying. The defendant has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case related hearings.

(g) Upon the motion of either party or upon the senior judge's own motion, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall determine whether the defendant has proved, by clear and convincing evidence, that the defendant is factually innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief, however, if two of the judges have determined that the defendant is factually innocent of the charges, then the decision of the panel must be reviewed by the Supreme Court according to the procedures set out in subsections (i) and (j) of this section. Any decision of the three-judge panel must be accompanied by findings of fact and conclusions of law.

(i) If only two of the judges have determined that the defendant is factually innocent of the charges, the case must be reviewed by the Supreme Court. In that event,

the clerk of court in the district of original jurisdiction shall, within 30 days from the decision of the three judge panel, forward to the Supreme Court the decision of the panel, together with the panel's findings of fact and conclusions of law and the record of proceedings before the panel, which shall include the Commission's opinion, supporting findings of fact and supporting record.

(j) The Supreme Court shall consider the record before it, and may hear oral arguments on any issue it deems appropriate. The Court shall determine whether the defendant has established factual innocence before the three-judge panel by clear and convincing evidence and remand the case to the three-judge panel for action consistent with the Court's decision.

"**§ 15A-1470. No right to further review of decision by Commission or three-judge panel; defendant retains right to other postconviction relief.**

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the defendant's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1411 reads as rewritten:

"**§ 15A-1411. Motion for appropriate relief.**

(a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

(d) A claim of factual innocence asserted through the North Carolina Innocence Inquiry Commission does not constitute a motion for appropriate relief and does not impact rights or relief provided for in this Article."

SECTION 5. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or , for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 6. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

SECTION 7. G.S. 132-1.4 reads as rewritten:

"**§ 132-1.4. Criminal investigations; intelligence information ~~records.~~records; Innocence Inquiry Commission records.**

(a) Records of criminal investigations conducted by public law enforcement ~~agencies or~~agencies, records of criminal intelligence information compiled by public law enforcement ~~agencies~~agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

...."

SECTION 8. G.S. 150B-1(c) reads as rewritten:

"(c) Full Exemptions. – This Chapter applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Health and Human Services in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(6) The State Board of Elections in administering the HAVA Administrative Complaint Procedure of Article 8A of Chapter 163 of the General Statutes.

(7) The North Carolina Innocence Inquiry Commission."

SECTION 9. Beginning January 1, 2007, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission.

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

Christine Mumma
NC Actual Innocence Comm

Representative Rick Glazier

Analysis of Discussions relating to the Innocence Inquiry Commission Bill

1) Commission Appointment Process:

Current Bill Language:

"§ 15A-1463. Membership; chair; meetings; quorum.
(a) The Commission shall consist of seven voting members appointed by the Chief Justice of the North Carolina Supreme Court. Of the seven members, one shall be a superior court judge, one shall be a prosecuting attorney, one shall be a victim advocate, one shall be engaged in the practice of criminal defense law, and one shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department. The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice. The Chief Justice shall also appoint alternate Commission members to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the Chief Justice shall make a good faith effort to appoint members with different perspectives of the justice system. The Chief Justice shall also consider geographical location, gender, and racial diversity in making the appointments.

Conference of District Attorneys Comment to Issue 1:

Appointments should not be vested in the personality or politics of a single individual. The Commission is a review process, not a formal judicial function. Citizens have always been vested as finders of fact in our criminal justice system and the Commission should reflect that premise. Having a solid layperson component on the Commission will serve to strengthen public confidence in the findings. Recommendation:

Non-Attorney -	Appointed by Governor
Non-Attorney-	Appointed by the Senate President Pro Tempore
Non-Attorney-	Appointed by the Speaker of the House
Superior Ct. Judge-	Appointed by the Chief Justice
Prosecuting Attorney-	Appointed by Conference of District Attorneys
Attorney-	Appointed by NC Academy of Trial Lawyers
Victim Advocate-	Appointed by NC Victims Assistant Network

NCATL Comment to Issue 1:

The Academy's alternative bill eliminates the seven member panel of the Commission and gives the power to recommend judicial review of a claim to the director. The director of the Commission is appointed by the Chief Justice, in consultation with the Conference of DA's, NCATL, and the Deans of each of the participating law schools, for a four-year term.

NC Actual Innocence Commission Comment to Issue 1:

The Commission considered alternative appointment strategies, including appointment by associations/conferences and appointments by the three branches. After much debate, Commission members agreed that unlike other commissions (court commission, sentencing commission, IDS commission), this is not a commission to establish procedure/process. This is a judicial function. Additionally, it is imperative that the commission members are objective and independent. They should only be representing their own good judgment – not their constituencies. They should be independent thinkers that benefit from their experience in certain roles, but are able to step out of those roles to make objective and independent evaluations of evidence. They should not feel they are answering to their appointing party. Finally, the ability of the members to work together is imperative. This will be assured by one appointing party.

If there were any compromise on this point, the Commission feels strongly that the appointments should only be shared by the other branches of government and not by the associations/conferences.

Note: It should be noted that in Section 15A-1563(a), the sentence "In making the appointments, the Chief Justice shall make a good faith effort to appoint members with different perspectives of the justice system" should read "In making the appointments, the Chief Justice shall consider recommendations for appointment of voting Commission members from the different perspectives of the criminal justice system."

2) Closed nature of Commission hearings:

Current Bill Language:

"§ 15A-1468. Commission proceedings.

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

Conference of District Attorneys Comment to Issue 2:

Unlike a grand jury proceeding, which is an "accusatory process", the Innocence Inquiry Commission is an "excusatory process" which should be open to the public.

NCATL Comment to Issue 2: No direct comment, but under the NCATL alternative bill there is not a seven member hearing, so the director would be reviewing evidence. The director could make his/her review of evidence open to the victim.

NC Actual Innocence Commission Comment to Issue 2:

There were extensive discussions on this topic. Resolution was based on the fact that the Commission hearings are investigative hearings and do not result in any judicial action other than referral to a three judge panel. Commission meetings were likened to grand jury hearings, parole hearings and clemency hearings, which are all closed. Closed hearings ensure that unsubstantiated allegations of police, judicial, or prosecutorial misconduct are not aired to the public. Closed hearings encourage candid discussion and questioning by Commission members. Closed hearings reduce posturing by commission members. Closed hearings ensure the media does not report on cases which will eventually be found to be unsubstantiated and/or reporting on cases before the Commission reaches a determination, thereby protecting victims, witnesses,

families, and the justice system from unnecessary public attention. Additionally, no action can result from a Commission hearing without complete disclosure of all evidence presented at a hearing. All hearing transcripts will become public if the case is referred to a three-judge panel.

This is a point the Commission is willing to concede on, with review of the process and reconsideration of the nature of the hearings to occur at a later date.

3) Record Retention:

Current Bill Language: Not addressed.

Conference of District Attorneys Comment to Issue 3:

To prove factual innocence a case must be thoroughly investigated. Therefore, retention of records for prosecutors, defendants and clerks of court is vital to an accurate and complete account of the crime and the defense. The next worse thing to having an innocent person in jail would be to allow a guilty person to go free through this process.

NCATL Comment to Issue 3: Not addressed.

NC Actual Innocence Commission Comment to Issue 3:

Record retention is not impacted by this bill any more than it is by the current MAR statute. If record retention is an issue, it should be addressed separately.

Rules of Professional Conduct (Rule 209) require that records be retained for a minimum of six years without defendant permission to destroy.

The defendant has an enormous burden to overcome to prove innocence in his/her case. If records are destroyed, it will be to his/her detriment. Transcripts of evidence supporting the conviction will be available. The defendant will have to present sufficient NEW evidence to overcome that conviction.

Prosecutors often point out that they do not have room for the current records they have to maintain. Scanning and paperless storage options should be explored. Additionally, many defendants would agree to record/evidence destruction if consent were requested.

This is a point the Commission feels is unrelated to the bill and requires further study and review.

4) Commission review of individuals who are no longer incarcerated:

Current Bill Language:

"§ 15A-1460. Definitions.

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

"§ 15A-1466. Duties.

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

Conference of District Attorneys Comment to Issue 4:

This is primarily a resource issue which could be modified at a later time if necessary. There are other extraordinary means for people who are not incarcerated. Including non-incarcerated people could open the process up to people who are trying to effect new charges. Some might attempt to use the Commission as an expungement process.

NCATL Comment to Issue 4: Not addressed.

NC Actual Innocence Commission Comment to Issue 4:

The Commission debated over whether claims should be accepted on behalf of the deceased. It was agreed that, because of resource limitations and the need for some eventual finality, claims on behalf of the deceased should not be accepted.

Additionally, the Commission originally agreed that claims should only be accepted on behalf of those still incarcerated. However, after much debate, it was agreed that there is ongoing burden carried by those who have been previously incarcerated, particularly for sex offenders. Also, if there is evidence that someone else is the true perpetrator, that evidence should be brought forward so the perpetrator can be prosecuted. Therefore, the bill does not preclude review of a

claim by someone who is no longer incarcerated, but those claims, as with any claim, may be denied at the discretion of the Commission. The Commission will establish internal operating rules for prioritization of claims. If the Commission has a backlog and limited resources, it will make claims by incarcerated individuals its priority.

5) Guilty Pleas:

Current Bill Language: Guilty pleas are not excluded from review.

Conference of District Attorneys Comment to Issue 5:

Addressing guilty pleas is a fundamental due process issue. Every plea to a felony includes an agreement that the defendant understands the nature of the charge and is knowingly and voluntarily entering into a plea of guilty. If there is a procedural problem, there are other remedies, i.e. motion for appropriate relief, pardons, etc.

NCATL Comment to Issue 5: Not addressed.

NC Actual Innocence Commission Comment to Issue 5:

The Commission considered whether guilty pleas should be included in review. Commission members agreed that there is extensive evidence that people plead guilty, often out of fear or frustration, to charges they did not commit. Law enforcement is permitted by law to mislead a defendant with regard to the evidence against them, including fingerprint evidence, polygraph results, DNA evidence, witnesses, etc. If an individual is presented with that evidence, has little confidence in the justice system, and taking a plea will subject them to less time, he/she will likely take the plea.

An alternative to the current bill, which allows a three-judge panel to dismiss the charges, would be, in the case of a guilty plea, for the three-judge panel to require a trial.

6) Sunset Provision:

Current Bill Language: The bill does not sunset.

Conference of District Attorneys Comment to Issue 6:

Because this is an extraordinary procedure, never before experienced in our nation's criminal justice process, there needs to be a built-in review of the program. A review of two-years would allow for the legislature to continue the work of the Commission, modify or dissolve the program as necessary.

NCATL Comment to Issue 6: Not addressed.

NC Actual Innocence Commission Comment to Issue 6:

Typically it takes two years to screen and investigate a claim of innocence. It is not likely the Commission will have a sufficient record to review in two years. Additionally, this is a ground-breaking process that will take time to perfect. Having a sunset date looming in the future will make it difficult to obtain and motivate staff.

An alternative to a sunset provision is to have a mandatory review of the process by a study committee in three years.

7) Amount of evidence required for claim review:

Current Bill Language:

"§ 15A-1460. Definitions.

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and **for which there is credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.**

Conference of District Attorneys Comment to Issue 7: Not addressed

NCATL Comment to Issue 7:

The Academy would like the innocence inquiry bill to more clearly state that if there is some amount of new evidence to support a claim of innocence, the new evidence will be considered along with the rest of the cumulative evidence in the case, even if all the rest of the evidence in a case has previously been presented at a trial or considered at a hearing granted through post-conviction relief. This change might be accomplished simply by adding the word "some" to the definition of a credible claim of factual innocence, as follows:

a) A credible claim of factual innocence is defined as:

- a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina,
- asserting complete innocence of any criminal responsibility for the felony for which he was convicted and for any other reduced level of criminal responsibility relating to the crime,
- for which there is **some** credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through post-conviction relief.

NC Actual Innocence Commission Comment to Issue 7: Agree with the Academy recommended change.

8) Vote requirement for referral by Commission to three-judge panel:

Current Bill Language:

If five or more of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

Conference of District Attorneys Comment to Issue 8: Not addressed

NCATL Comment to Issue 8:

The Academy's alternative bill eliminates the seven member panel of the Commission and gives the power to recommend judicial review of a claim to the director. Besides wanting to streamline the process by having one reviewer rather than seven, the Academy's primary concerns with the seven member panel seem to be the makeup of the members and the supermajority vote requirement of 5/7. The Academy **might agree** to a majority vote requirement of 4/7 if the makeup of the seven Commission members was more balanced.

NC Actual Innocence Commission Comment to Issue 8:

There were extensive discussions regarding the balance of the standard of review and number of votes required by the commission verses the three-judge panel. Vote discussions for the commission ranged from unanimous to 6/7, 5/7 and 4/7. Votes by the three-judge panel ranged from unanimous to 2/3. We eventually balanced the number of required votes with the defendant's burden. Compromise was reached by lowering the burden standard for a claim to pass the Commission to sufficient evidence from clear and convincing. This lowers the weight being put on the Commission's determination and moves the burden to the public hearing before the three-judge panel. The Commission agrees that the burden on the defendant is extremely high to overcome - the question is how to balance the burden to maximize confidence. The burden should not be so cumbersome that valid claims do not make it to a three-judge panel, yet sufficiently cumbersome to preclude review of invalid claims.

9) Defendant Waiver:

Current Bill Language:

"§ 15A-1467. (b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant waives his or her procedural safeguards and privileges, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(g) If, at any point during an inquiry, the defendant refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

Conference of District Attorneys Comment to Issue 9: Not addressed

NCATL Comment to Issue 9:

The Academy feels the requirement that the defendant "fully cooperate with the Commission" is sufficient and there should not be a requirement for a waiver up front.

NC Actual Innocence Commission Comment to Issue 9:

The addition of the following language might be an acceptable compromise:

"§ 15A-1467. (b) No formal inquiry into a claim of innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant waives his or her procedural safeguards and privileges **to the extent necessary for inquiry into the defendant's claim of innocence**, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

10) Three-judge panel:

Current Bill Language:

"§ 15A-1469. Postcommission three-judge panel.

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the senior resident superior court judge shall request the Chief Justice appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside.

Conference of District Attorneys Comment to Issue 10: Not addressed

NCATL Comment to Issue 10:

Under the NCATL alternative bill, if the director finds "sufficient evidence of innocence to merit judicial review," the case moves back into the MAR process, but a hearing is required and MAR procedural bars do not apply. The NCATL appreciates that a three-judge panel takes the burden off a single judge. However,

the NCATL feels the unanimous vote requirement of the current bill is unreasonable.

NC Actual Innocence Commission Comment to Issue 10:

See comment under #8 above. The Commission discussed the fact that any case that can make it through the seven member Inquiry Commission and receive the vote of two judges, will likely receive a three-judge vote.

The Commission feels strongly that cases should not be re-routed to the current MAR process after Inquiry review.

The NCATL might be amenable to a majority vote of the judge panel or review by one judge, after the seven member Commission, with a recommendation going to the Supreme Court for vote.

8/9/05
10AM

B. Vickory

NC CONFERENCE OF DISTRICT ATTORNEYS

INNOCENCE COMMISSION RECOMMENDATIONS

I. Commission Appointment Process

- Appointment of the 7-member Commission should not be vested in the personality or politics of a single individual.
- Appointments should reflect the diversity of the criminal justice system as well as the State.
- The Commission is a review process – not a formal judicial function.
  - It is a common sense review of evidence that was determined by a 12-citizen jury.
  - Citizens have always been vested as finders of fact in our criminal justice system. The Commission should reflect that premise.
  - Having a solid layperson component on the Commission will serve to strengthen public confidence in the Commission's findings.
- Recommended Appointments
  - Non-Attorney – Appointed by the Governor
  - Non-Attorney – Appointed by the Senate President Pro Tempore
  - Non-Attorney – Appointed by the Speaker of the House
  - Superior Court Judge – Appointed by the Chief Justice
  - Prosecuting Attorney – Appointed by the Conference of District Attorneys
  - Attorney – Appointed by NC Academy of Trial Lawyers
  - Victim Advocate – Appointed by NC Victims Assistant Network
- The Chief Justice would appoint the 3-judge panel for any hearing requested by the Commission's actions.

II. Commission Meetings Should be Open to the Public

- Unlike a grand jury proceeding, which is an "accusatory" process, the Innocence Inquiry Commission is an "excusatory" process which should be open to the public.
- As set out in North Carolina's Constitution: "All courts shall be open; every person for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law; and right & justice shall be administered without favor, denial, or delay."

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INNOCENCE COMMISSION RECOMMENDATIONS CONTINUED

III. Records Retention

- To prove factual innocence, a case must be thoroughly investigated. Therefore, retention of records for prosecutors, defendants and clerks of court is vital to an accurate and complete account of the crime and the defense.
- The next worse thing to having an innocent person in jail would be to allow a guilty person to go free through this process.

IV. Commission Activity Would Apply to Incarcerated Individuals Only.

- This is primarily a resource issue which could be modified at a later time if necessary.
- There are other extraordinary means for people who are not incarcerated.
- Including non-incarcerated people could open the process up to people who are trying to effect new charges.
- Some might attempt to use the Commission as an expungement process.

V. Guilty Pleas Should be Exempt From This Process.

- Addressing guilty pleas is a fundamental due process issue.
- Every plea to a felony must contain the following:
  - That the defendant understands the nature of the charge
  - The defendant is informed that he has a right <u>not</u> to plead guilty
  - The defendant has the benefit of counsel
  - The defendant knowingly and voluntarily enters into the plea of guilty.
- There is no sound reason, consistent with public policy, to overturn this procedure.
- If there is a procedural problem; there are other remedies, i.e. motions for appropriate relief, pardons, etc.

VI. Sunset Provision

- Because this is an extraordinary procedure, never before experienced in our nation's criminal justice process, there needs to be a built-in review of the program.
- A review in two years would allow for the legislature to continue the work of the Commission, modify or dissolve the program as necessary.

VISITOR REGISTRATION SHEET

JUDICIARY IV — August 9, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mel Chilton	NCVAN
Ralph Walker	AOC
STEVE BIZZELL	SHERIFF - JOHNSTON CO.
Greg Mcleod	NC Atty Gen. rtc
J. Beverly Lake	Chief Justice
Christine Mumma	NC Actual Innocence Commission
Holly Bryan	NCATL
Fred Sprui:ll	Sheriff, Chowan County
Dick Taylor	NCATL
Anne Wilson	
Mc Hunter	NC DOS

VISITOR REGISTRATION SHEET

JUDICIARY IV — August 9, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Elvin Taylor III	6020 Wintergreen Pl. Raleigh, NC. 27609.
Ervin D. Taylor, Jr	208 Beverly Pl. Greensboro, NC 87403
Karen Wood	DA's Conference PO Box 25546 Raleigh NC 27611
Earl Butler	Sheriff Cumberland Co
Howard Lyon	NC Dem
Melanie Thomas	NC SBI P.O. Box 29500, Raleigh, 27626
John Cyrus	NCJ Grange
Bill Schatzman	Sheriff - Forsyth County
Brandy Vickory	Conf of DA's
Charles Heatherly	Citizen
Ben Fehrmon	Alamance DA Office

VISITOR REGISTRATION SHEET

JUDICIARY IV — August 9, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Robertson	AP
Cassandra Shuford	NCCCPS
Matt Weidlich	NCNN
Paul Pulley	NCATL
Peter A. Jones	ACLU

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

August 9, 2005
1:00 p.m.

The House Committee on Judiciary IV met on Thursday, August 9, 2005, in Room 415 of the Legislative Office Building at 1:00 p.m. The following committee members were present: Chairman Jennifer Weiss, Vice-Chair Glazier, Vice-Chair Kiser, Representatives Culpepper, Daughtry, Earle, Holloway, Justus, Martin, Parmon, and Ray. The following Ex-Officio members were present: Representatives Cunningham and Hackney. Staff attorneys Steve Rose and Jennifer McGinnis were also present. A copy of the Meeting Notice/Agenda is attached.

Chairman Weiss called the meeting to order and explained the Proposed Committee Substitute for House Bill 1323 was still before the committee and discussions were to continue from the morning meeting. She added that there were several groups present that wanted to explain their positions on the proposed bill.

Representative Glazier explained that since the earlier meeting, a number of groups had met and requested changes, some major and some minor, which would be offered with amendments.

Mr. Allen Jordan, Sheriff, Beaufort County, NC, spoke on behalf of the Sheriff's Association in support of the Proposed Committee Substitute.

Representative Ray asked for a definition of "new evidence" and was told it was credible evidence not previously submitted.

Mr. Dick Taylor, NC Academy of Trial Lawyers, spoke in support of the proposed legislation.

Mr. Rob Johnson, District Attorney, who has served on the Actual Innocence Commission, spoke in favor of the proposed legislation.

Representative Kiser asked how many claims of innocence were there per year? Ms. Mumma stated approximately 750 per year nationwide. Out of those 50% were initially rejected. After review of the remaining 50%, 80% of them were rejected drastically reducing the number or claims per year.

Representative Kiser stated that with the passage of the bill, those amounts would grow two to three times greater than the amounts at this time.

Representative Kiser inquired as to the felonies range and was told that all those convicted of a felony could apply but the Commission will screen each. If a defendant gave false information after signing the waiver, they could receive additional sentencing.

Representative Kiser inquired also about appeals that had already gone to a higher court. Why would this be needed? Representative Glazier responded there were several reasons. One being justice where the real criminal may still be loose and committing other crimes or maybe the defendant was forced into a plea for convenience not realizing his rights.

Representative Justus inquired if the bill allows for monetary relief; Representative Glazier said there is not from this bill; however, there are existing statutes that could be used to try to obtain monetary compensation.

Representative Glazier presented six (6) amendments to the Proposed Committee Substitute. Among some of the major changes included in the proposed amendments were:

- Commission will consist of eight (8) members rather than seven (7);
- The district attorney or designee may request assistance from the State Bureau of Investigation, the extent of which to be determined by the Secretary of Crime Control and Public Safety;
- The report shall also recommend the funding needed by the district attorney and the State Bureau of Investigation in order to meet their responsibilities under this Act;
- Alternate members shall also be appointed;
- One member shall be a sheriff at the time of appointment; and
- The appointing authority shall consider geographical location, gender and racial diversity.

Each of the amendments passed.

Representative Cunningham was called upon by Chairman Weiss to make a motion. Representative Cunningham moved for the amendments to be rolled into the proposed committee substitute and for a favorable report to the proposed committee substitute, as amended, unfavorable as to the original bill. Motion passed.

There being no further business, the meeting adjourned.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Meeting Notification, Committee Report, HB 1323, Bill Analysis, copy of Remarks of Sheriff Alan Jordan, Amendments (6), Committee Substitute.

NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
AND
BILL SPONSOR NOTIFICATION
2005-2006 SESSION

You are hereby notified that the Committee on **JUDICIARY IV** will continue to meet as follows:

DAY & DATE: **Tuesday, August 9, 2005**

TIME: **1:00 P.M.**

LOCATION: **Room 415, LOB**

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

HB 1323 - ESTABLISH NC INNOCENCE INQUIRY COMMISSION.
Representatives Glazier, Hackney and Cunningham

Respectfully,
Representative **Jennifer Weiss**
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at **11:00** on August **9, 2005.**

___Principal Clerk
___Reading Clerk - House Chamber

Susan Doty (Committee Assistant)

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1323 A BILL TO BE ENTITLED AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1323*

Short Title: Establish NC Innocence Inquiry Commission. (Public)

Sponsors: Representatives Glazier, Hackney, Cunningham (Primary Sponsors); Alexander, B. Allen, Bordsen, Dickson, Fisher, Goforth, Haire, Harrison, Insko, Jones, Lucas, Luebke, Miller, Parmon, Rapp, Ross, Tucker, Wainwright, Weiss, and Womble.

Referred to: Judiciary IV.

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is credible, verifiable

(a) The initial appointments shall be made within 30 days of the effective date of this section. Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and two appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this section, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

"**§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All seven voting members of the Commission shall participate in that vote.

If five or more of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than five of the seven voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the defendant disclosed through formal inquiry or Commission proceedings shall be disclosed to the defendant and the defendant's counsel, if the defendant has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or , for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 5. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

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

HOUSE BILL 1323:
Establish NC Innocence Inquiry Commission

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	August 9, 2005
Introduced by:	Reps. Glazier, Hackney, Cunningham	**Summary by:**	Steven Rose
Version:	PCS H1323-CSRL-45		Committee Counsel

SUMMARY: The Proposed Committee Substitute for HB 1323 would establish the NC Innocence Inquiry Commission, a 7-member body appointed by the Chief Justice. Its duty would be to hear claims of factual innocence by persons convicted of felonies. If at least four members of the Commission conclude there is sufficient evidence to merit judicial review, the Chief Justice shall appoint a 3-judge panel of the Superior Court to hold a hearing on the evidence. If the panel unanimously rules that it has been proven by clear and convincing evidence that the defendant is innocent, the panel shall dismiss the charges. If the 3-judge panel votes 2 to 1 for a finding of innocence, the inquiry is referred to the Supreme Court for the final decision based on the record. Decisions of the Commission and the 3-judge panel could not be appealed, with the exception of the 2 to 1 decision in favor of innocence of the 3-judge panel. Effective when the bill becomes law.

CURRENT LAW: Under existing law, a person convicted of a felony may appeal to an appellate court based on errors other than evidence, or the defendant may make a motion for appropriate relief from the trial court.

In 2002 Chief Justice I. Beverly Lake Jr. established the NC Actual Innocence Commission to study issues related to people being wrongly convicted of crimes they did not commit. That Commission recommended the Commission that would be established by this bill.

BILL ANALYSIS: The bill establishes the NC Innocence Inquiry Commission. It creates a new Article 92 in Chapter 15A. *Section 1 of bill.*

Administration. The Commission would be housed administratively within the Department of Justice and supported by the Administrative Office of the Court, but it would be an independent body. The seven members of the Commission would be appointed by the Chief Justice. Of those, there must be a Superior Court judge, a prosecutor, a victim advocate, a criminal defense attorney, and a layperson. The judge would be chair. Once the terms are fully phased in, the members would serve staggered 3-year terms. They would be limited to 2 consecutive terms. They would hire an attorney as Director and could hire other staff. *New G.S. 15A-1461 through 15A-1465.*

Claims of Factual Innocence. The Commission's chief duty would be to conduct inquiries into "claims of factual innocence," defined in the bill as a claim on behalf of a living person convicted of a felony in the NC courts, asserting that person's complete innocence of criminal responsibility for that felony and for any other reduced level of criminal responsibility related to the crime. There must be credible, verifiable evidence of innocence that has not previously been presented. *G.S. 15A-1460 and 15A-1466.*

Initiating an Inquiry. Anyone could present a claim of factual innocence to the Commission. The Commission would have discretion whether to conduct an inquiry. It could not conduct an inquiry unless it received a signed statement from the defendant waiving procedural safeguards and privileges and agreeing to cooperate with the Commission. The defendant has the right to advice of counsel before signing the agreement and during the inquiry. *G.S. 15A-1467.*

Commission's Proceedings. In conducting the inquiry, the Commission would have the discretion whether to conduct public hearings. The victim of the crime (or if the victim is dead, the victim's next of kin) must be notified if feasible at least 30 days prior to proceedings of the full Commission. The victim would have a limited right to attend non-public hearings. After hearing the evidence the Commission would vote, with all members present, on whether there is sufficient evidence of factual innocence to merit judicial review. If four members voted "yes," the Commission would forward its opinion, as well as the record in support of it, to the senior resident Superior Court judge of the district of original jurisdiction in the case. If four members do not vote "yes," the Commission would document its opinion and send the document to the clerk of court in the district of original jurisdiction, with copies to the DA and the senior resident Superior Court judge. Evidence of criminal acts, professional misconduct, or other wrongdoing would be referred to the appropriate authority. Evidence favorable to the defendant would be disclosed to the defendant and defendant's counsel. Due diligence would be used to notify the victim of the result. *G.S. 15A-1468.*

Open Meetings and Public Records. The Commission's proceedings and records would be confidential and exempt from the Open Meetings and Public Records laws, except that if the Commission votes that there is sufficient evidence of factual innocence, the supporting records of that finding become public when referred to Superior Court. That includes all files and materials considered by the Commission and transcripts of its hearings. If the Commission votes there is not sufficient evidence of factual innocence, the records stay closed. *G.S. 15A-1468.*

Postcommission 3-Judge Panel. If four members find sufficient evidence and the Commission sends the case to Superior Court, that judge must request the Chief Justice to appoint a 3-judge panel of trial judges who have not had previous involvement in the case. The senior of those judges would preside. The 3-judge panel would hear evidence in a special session of Superior Court in the district of original jurisdiction of the case. The State would have 60 days after the hearing is set to file a response to the Commission's opinion. The DA would represent the State at the hearing. The panel could compel the testimony of any witness, including the defendant. The defendant has the right to be present at the hearing and be represented by counsel, but may not assert any privilege or prevent a witness from testifying. The victim would be notified 30 days before the hearing. The 3-judge panel would have to determine whether there is "clear and convincing evidence" (higher than "by the greater weight of the evidence" but lower than "beyond a reasonable doubt") that the defendant is innocent of the charges. If the 3 judges are unanimous in saying "yes," they are required to dismiss the charges. If they are not unanimous, they must deny relief. However, if two judges of the panel find the defendant is innocent, the decision must be reviewed by the Supreme Court. *G.S. 15A-1469.*

Panel's Decision is Final. The bill provides that the decisions of the Commission and the 3-judge panel are final and not subject to further review by appeal, certification, writ, or motion, except in the 2 to 1 situation described above. But a claim of factual innocence through the Commission would not adversely affect the defendant's rights to other post-conviction relief. *G.S. 15A-1470.*

Sections 2, 3, 4, and 5 of the bill add referring a case to the Commission as an option in seeking and granting relief under existing statutes. Section 6 adds the Commission to the public bodies exempted from the Open Meetings Law. Section 7 makes the Commission records of investigations exempt from the Public Records Law. Section 8 clarifies that the Commission is not subject to the APA. Section 9 requires annual reports by the Commission to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Counsel. Section 10 makes the act effective when it becomes law.

H1323e1-SMRL

William R. Gilkeson and Walker Reagan, co-counsel to the Senate Judiciary I Committee, substantially contributed to this summary.

Remarks of Sheriff Alan Jordan (Beaufort County)
House Judiciary IV Committee Concerning
House Bill 1323, Establish NC Innocence Inquiry Commission
August 9, 2005

Thank you Chairman Weiss, Representative Glazier and members of the Committee for allowing me to speak to you today about this important legislation. I am Sheriff Alan Jordan of Beaufort County. I am here on behalf of myself and the North Carolina Sheriffs' Association. This is an issue of great importance to the Sheriffs and the entire criminal justice system and many Sheriffs are here in attendance today, including our President, Sheriff Ronald Hewett of Brunswick County, and I would like to ask the Sheriffs in attendance to stand at this time.

I serve as a member of the Actual Innocence Commission and was able to attend almost all of the meetings since my appointment.

The office of Sheriff is one of the offices in our government that is closest to the people. Every day I am frequently in contact with citizens in my county, as is every other Sheriff in North Carolina. We would

never want an innocent person to be wrongly convicted, or to remain in prison once evidence of their innocence is proven.

Changes made to criminal procedures laws in recent years have gone a long way to ensure adequate relief for those wrongfully convicted. The establishment of the North Carolina Innocence Inquiry Commission is designed as another step in that process. However, if we are going to make these changes in our criminal procedure system, we must do it properly.

The Conference of District Attorneys has clearly explained to this Committee the changes in this legislation that are requested by the Conference of District Attorneys and by the North Carolina Sheriffs' Association. In addition, the Sheriffs believe that the Innocence Inquiry Commission should include a law enforcement officer which should be a Sheriff~~, appointed upon the recommendation of the NC Sheriffs' Association~~. Since the Commission will include an elected superior court judge and an elected district attorney, we believe that a law enforcement officer should also be appointed who is elected by the

people of North Carolina. No one knows how the criminal justice process works better than a law enforcement officer, because we begin the case long before the district attorney and the criminal defense lawyer or the court get involved. We see the case from day one until the last day and can bring added perspective to the Commission's work that would otherwise be missing.

On behalf of the North Carolina Sheriffs' Association, we request that amendments to this legislation be included to make the changes EXPLAINED BY REPRESENTATIVE GLAZIER. ~~addressed by The Conference of District Attorneys and to include the appointment, upon the recommendation of the NC Sheriffs' Association, of a Sheriff to the Commission~~.

We urge this Committee to not approve this legislation without these changes. With these changes, the North Carolina Sheriffs' Association will support this legislation and work closely with Representative Glazier to get it enacted into law before the adjournment of this year's legislative Session.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1323*

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

H1323-ARL-10 [v.1]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
H1323-CSRL-45[v.7]

Representative _____

moves to amend the bill on page 2, line 23 by rewriting that line to read:
"advocate, one shall be engaged in the practice of criminal defense law, one shall be a sheriff holding office at the time of his or her appointment, and one shall be";

and on page 2, line 25 by rewriting that line to read:
"Judicial Department. The vocation of the remaining appointed voting member";

and on page 3, line 5 by rewriting that line to read:
"Members serving by virtue of elective or appointive office, except for the sheriff, may serve only so long as".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1323*

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

H1323-ALH-46 [v.2]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
H1323-CSRL-45

Representative _____

moves to amend the bill on page 9, lines 9-10,
by inserting between those lines the following:

"**SECTION 9.1.** The State Judicial Council shall report to the General Assembly and the Chief Justice no later than December 31, 2008, regarding the implementation of this act and shall include in its report the statistics regarding inquiries and any recommendations for changes."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1323*

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

H1323-ALH-44 [v.2]

Date _____,2005

Comm. Sub. [YES]
Amends Title [NO]
H1323-CSRL-45

Representative _____

moves to amend the bill on page 4, lines 18-19,
by adding a period after the word "agreement" and deleting the remainder of the sentence.; and

on page 2, lines 13-14,
by deleting the phrase ", but shall be located"; and

on page 8 line 34 through page 9, line 4,
by deleting those lines and renumbering the following sections accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1323*

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

H1323-ARI-20 [v.1]

Date _____,2005

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

Representative Glazier

moves to amend the bill on page 2, lines 20 through 32 by rewriting those lines to read:

"(a) The Commission shall consist of eight voting members as follows:

(1) One shall be a superior court judge.

(2) One shall be a prosecuting attorney.

(3) One shall be a victim advocate.

(4) One shall be engaged in the practice of criminal defense law.

(5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.

(6) One shall be a sheriff at the time of his or her appointment.

(7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

The Chief Justice of the North Carolina Supreme Court shall make the initial appointment for members identified in subdivisions (4) through (6). The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in subdivisions (1) through (3). After an appointee has served his or her first three year term, the subsequent appointment shall be by the Justice or judge who did not make the previous appointment. Thereafter, the Justice or judge shall rotate the appointing power, except for the two discretionary appointments identified by subdivision (7) which shall be appointed by the Chief Justice.

(a1) The appointing authority shall also appoint alternate Commission members for the commission members he or she appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing authority shall make a good faith effort to appoint members with different perspectives of the justice system.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1323*

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

H1323-ARI-20 [v.1]

The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 8/9/05

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

COMMITTEE SUBSTITUTE ✓ H1323-CSRL-45 [v7]

(Rep.) Sen.)

1 moves to amend the bill on page ~~3~~ 9, line ~~1~~ 9

2 ( ) WHICH CHANGES THE TITLE

3 by ~~rewriting that~~ By adding at the

4 end of that line: "The report

5 shall also recommend the

6 funding needed by the district

7 attorneys and the State Bureau

8 of Investigation, in order to meet

9 their responsibilities under this

10 Act."

11

12

13

14

15

16

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18

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1323 PCS

DATE _____

S. B. No. _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
) _____
Sen.)

moves to amend the bill on page ~~2~~ 6, line 18

( ) WHICH CHANGES THE TITLE

by Adding the following sentence:

"The district attorney or the district attorney's designee ~~shall~~ may request assistance from the State Bureau of Investigation. The extent of assistance shall be determined by the Secretary of Crime Control and Public Safety."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1323*
PROPOSED COMMITTEE SUBSTITUTE H1323-PCS30362-RL-45

Short Title: Establish NC Innocence Inquiry Commission. (Public)

Sponsors:

Referred to:

April 20, 2005

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE NORTH CAROLINA INNOCENCE INQUIRY COMMISSION AS RECOMMENDED BY THE NORTH CAROLINA ACTUAL INNOCENCE COMMISSION.

Whereas, postconviction review of credible claims of factual innocence supported by verifiable evidence not previously presented at trial or at a hearing granted through postconviction relief should be addressed expeditiously to ensure the innocent as well as the guilty receive justice; and

Whereas, public confidence in the justice system is strengthened by thorough and timely inquiry into claims of factual innocence; and

Whereas, factual claims of innocence, which are determined to be credible, can most effectively and efficiently be evaluated through complete and independent investigation and review of the same; Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 92.

"North Carolina Innocence Inquiry Commission.

"**§ 15A-1460. Definitions.**

The following definitions apply in this Article:

(1) "Claim of factual innocence" means a claim on behalf of a living person convicted of a felony in the General Court of Justice of the State of North Carolina, asserting the complete innocence of any criminal responsibility for the felony for which the person was convicted and for any other reduced level of criminal responsibility relating to the crime, and for which there is some credible, verifiable evidence of innocence that has not previously been presented at trial or considered at a hearing granted through postconviction relief.

(2) "Commission" means the North Carolina Innocence Inquiry Commission established by this Article.
(3) "Director" means the Director of the North Carolina Innocence Inquiry Commission.
(4) "Victim" means the victim of the crime, or if the victim of the crime is deceased, the next of kin of the victim.

"**§ 15A-1461. Purpose of Article.**

This Article establishes an extraordinary procedure to investigate and determine credible claims of factual innocence that shall require an individual to voluntarily waive rights and privileges as described in this Article.

"**§ 15A-1462. Commission established.**

(a) There is established the North Carolina Innocence Inquiry Commission. The North Carolina Innocence Inquiry Commission shall be an independent commission under the Judicial Department for administrative purposes.

(b) The Administrative Office of the Courts shall provide administrative support to the Commission as needed. The Director of the Administrative Office of the Courts shall not reduce or modify the budget of the Commission or use funds appropriated to the Commission without the approval of the Commission.

"**§ 15A-1463. Membership; chair; meetings; quorum.**

(a) The Commission shall consist of eight voting members as follows:
(1) One shall be a superior court judge.
(2) One shall be a prosecuting attorney.
(3) One shall be a victim advocate.
(4) One shall be engaged in the practice of criminal defense law.
(5) One shall be a public member who is not an attorney and who is not an officer or employee of the Judicial Department.
(6) One shall be a sheriff holding office at the time of his or her appointment.
(7) The vocations of the two remaining appointed voting members shall be at the discretion of the Chief Justice.

The Chief Justice of the North Carolina Supreme Court shall make the initial appointment for members identified in subdivisions (4) through (6) of this subsection. The Chief Judge of the Court of Appeals shall make the initial appointment for members identified in subdivisions (1) through (3) of this subsection. After an appointee has served his or her first three-year term, the subsequent appointment shall be by the Chief Justice or Chief Judge who did not make the previous appointment. Thereafter, the Chief Justice or Chief Judge shall rotate the appointing power, except for the two discretionary appointments identified by subdivision (7) of this subsection which shall be appointed by the Chief Justice.

(a1) The appointing authority shall also appoint alternate Commission members for the Commission members he or she has appointed to serve in the event of scheduling conflicts, conflicts of interest, disability, or other disqualification arising in a particular case. The alternate members shall have the same qualifications for appointment as the original member. In making the appointments, the appointing

authority shall make a good faith effort to appoint members with different perspectives of the justice system. The appointing authority shall also consider geographical location, gender, and racial diversity in making the appointments.

(b) The superior court judge who is appointed as a member under subsection (a) of this section shall serve as Chair of the Commission. The Commission shall have its initial meeting no later than January 31, 2006, at the call of the Chair. The Commission shall meet a minimum of once every six months and may also meet more often at the call of the Chair. The Commission shall meet at such time and place as designated by the Chair. Notice of the meetings shall be given at such time and manner as provided by the rules of the Commission. A majority of the members shall constitute a quorum. All Commission votes shall be by majority vote.

"**§ 15A-1464. Terms of members; compensation; expenses.**

(a) The initial appointments shall be made within 30 days of the effective date of this act. Of the initial members, two appointments shall be for one-year terms, three appointments shall be for two-year terms, and three appointments shall be for three-year terms. Thereafter, all terms shall be for three years. Members of the Commission shall serve no more than two consecutive three-year terms plus any initial term of less than three years. Unless provided otherwise by this act, all terms of members shall begin on January 1 and end on December 31.

Members serving by virtue of elective or appointive office, except for the sheriff, may serve only so long as the officeholders hold those respective offices. The Chief Justice may remove members, with cause. Vacancies occurring before the expiration of a term shall be filled in the manner provided for the members first appointed.

(b) The Commission members shall receive no salary for serving. All Commission members shall receive necessary subsistence and travel expenses in accordance with the provisions of G.S. 138-5 and G.S. 138-6, as applicable.

"**§ 15A-1465. Director and other staff.**

(a) The Commission shall employ a Director. The Director shall be an attorney licensed to practice in North Carolina at the time of appointment and at all times during service as Director. The Director shall assist the Commission in developing rules and standards for cases accepted for review, coordinate investigation of cases accepted for review, maintain records for all case investigations, prepare reports outlining Commission investigations and recommendations to the trial court, and apply for and accept on behalf of the Commission any funds that may become available from government grants, private gifts, donations, or bequests from any source.

Subject to the approval of the Chair, the Director shall employ such other staff and shall contract for services as is necessary to assist the Commission in the performance of its duties, and as funds permit.

The Commission may, with the approval of the Legislative Services Commission, meet in the State Legislative Building or the Legislative Office Building, or may meet in an area provided by the Director of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall provide office space for the Commission and the Commission staff.

"**§ 15A-1466. Duties.**

The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of factual innocence, with priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime for which he or she claims factual innocence.

(3) To coordinate the investigation of cases accepted for review.

(4) To maintain records for all case investigations.

(5) To prepare written reports outlining Commission investigations and recommendations to the trial court at the completion of each inquiry.

(6) To apply for and accept any funds that may become available for the Commission's work from government grants, private gifts, donations, or bequests from any source.

"**§ 15A-1467. Claims of innocence; waiver of defendant's procedural safeguards and privileges; formal inquiry; notification of the crime victim.**

(a) A claim of factual innocence may be referred to the Commission by any court, person, or agency. The determination of whether to grant a formal inquiry regarding a claim of factual innocence is in the discretion of the Commission. The Commission may informally screen and dismiss a case summarily at its discretion.

(b) No formal inquiry into a claim of factual innocence shall be made by the Commission unless the Director or the Director's designee first obtains a signed agreement from the defendant in which the defendant agrees to waive his or her procedural safeguards and privileges to the extent necessary for inquiry into the defendant's claim of innocence, agrees to cooperate with the Commission, and agrees to provide full disclosure regarding all inquiry requirements of the Commission. The defendant shall have the right to advice of counsel prior to the execution of the agreement and, if a formal inquiry is granted, throughout the formal inquiry. If counsel represents the defendant, then the defendant's counsel must be present at the signing of the agreement. If counsel does not represent the defendant, the Commission Chair shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel for the purpose of advising on the agreement.

(c) If a formal inquiry regarding a claim of factual innocence is granted, the Director shall use all due diligence to notify the victim in the case and explain the inquiry process. The Commission shall give the victim notice that the victim has the right to present his or her views and concerns throughout the Commission's investigation.

(d) The Commission may use any measure provided in Chapter 15A of the General Statutes and the Rules of Civil Procedure as set out in G.S. 1A-1 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue process to compel the attendance of witnesses and the production of evidence, administer oaths, petition the Superior Court of Wake County or of the original jurisdiction for enforcement of process or for other relief, and prescribe its own rules of procedure. All challenges with regard to the Commission's authority or the

Commission's access to evidence shall be heard by the Commission Chair in the Chair's judicial capacity, including any in camera review required by G.S. 15A-908.

(e) While performing duties for the Commission, the Director or the Director's designee may serve subpoenas or other process issued by the Commission throughout the State in the same manner and with the same effect as an officer authorized to serve process of the General Court of Justice.

(f) All State discovery and disclosure statutes in effect at the time of formal inquiry shall be enforceable as if the defendant were currently being tried for the charge for which the defendant is claiming innocence.

(g) If, at any point during an inquiry, the defendant refuses to comply with requests of the Commission or is otherwise deemed to be uncooperative by the Commission, the Commission shall discontinue the inquiry.

"**§ 15A-1468. Commission proceedings.**

(a) At the completion of a formal inquiry, all relevant evidence shall be presented to the full Commission. As part of its proceedings, the Commission may conduct public hearings. The determination as to whether to conduct public hearings is solely in the discretion of the Commission. Any public hearing held in accordance with this section shall be subject to the Commission's rules of operation.

(b) The Director shall use all due diligence to notify the victim at least 30 days prior to any proceedings of the full Commission held in regard to the victim's case. The Commission shall notify the victim that the victim is permitted to attend proceedings otherwise closed to the public, subject to any limitations imposed by this Article. If the victim plans to attend proceedings otherwise closed to the public, the victim shall notify the Commission at least 10 days in advance of the proceedings of his or her intent to attend. If the Commission determines that the victim's presence may interfere with the investigation, the Commission may close any portion of the proceedings to the victim.

(c) After hearing the evidence, the full Commission shall vote to establish further case disposition as provided by this subsection. All eight voting members of the Commission shall participate in that vote.

If five or more of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the case shall be referred to the senior resident superior court judge in the district of original jurisdiction by filing with the clerk of court the opinion of the Commission with supporting findings of fact, as well as the record in support of such opinion, with service on the district attorney in noncapital cases and service on both the district attorney and Attorney General in capital cases.

If less than five of the eight voting members of the Commission conclude there is sufficient evidence of factual innocence to merit judicial review, the Commission shall conclude there is insufficient evidence of factual innocence to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and file those documents and supporting materials with the clerk of superior court in the district of original jurisdiction, with a copy to the district attorney and the senior resident superior court judge.

The Director of the Commission shall use all due diligence to notify immediately the victim of the Commission's conclusion in a case.

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. Evidence favorable to the defendant disclosed through formal inquiry or Commission proceedings shall be disclosed to the defendant and the defendant's counsel, if the defendant has counsel.

(e) All proceedings of the Commission shall be recorded and transcribed as part of the record. All Commission member votes shall be recorded in the record. All records and proceedings of the Commission are confidential and are exempt from public record and public meeting laws except that the supporting records for the Commission's conclusion that there is sufficient evidence of factual innocence to merit judicial review, including all files and materials considered by the Commission and a full transcript of the hearing before the Commission, shall become public at the time of referral to the superior court. Commission records for conclusions of insufficient evidence of factual innocence to merit judicial review shall remain confidential, except as provided in subsection (d) of this section.

"**§ 15A-1469. Postcommission three-judge panel.**

(a) If the Commission concludes there is sufficient evidence of factual innocence to merit judicial review, the senior resident superior court judge in the district of original jurisdiction shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's opinion. The Chief Justice shall then appoint the three-judge panel, and the senior judge of the panel shall preside.

(b) The senior resident superior court judge shall enter an order setting the case for hearing at the special session of superior court for which the three-judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 60 days of the date of the order.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel. The district attorney or the district attorney's designee may request assistance from the State Bureau of Investigation. The extent of assistance shall be determined by the Attorney General.

(d) The senior resident superior court judge shall determine the defendant's indigency status and, if appropriate, enter an order for the appointment of counsel. The court may also enter an order relieving an indigent defendant of all or a portion of the costs of the proceedings.

(e) The three-judge panel shall, after reviewing the Commission's opinion and findings of fact and record, conduct an evidentiary hearing. At the hearing, the court may compel the testimony of any witness, including the defendant. The defendant may not assert any privilege or prevent a witness from testifying. The defendant has a right

to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party or upon the senior judge's own motion, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall determine whether the defendant has proved, by clear and convincing evidence, that the defendant is factually innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief, however, if two of the judges have determined that the defendant is factually innocent of the charges, then the decision of the panel must be reviewed by the Supreme Court according to the procedures set out in subsections (i) and (j) of this section. Any decision of the three-judge panel must be accompanied by findings of fact and conclusions of law.

(i) If only two of the judges have determined that the defendant is factually innocent of the charges, the case must be reviewed by the Supreme Court. In that event, the clerk of court in the district of original jurisdiction shall, within 30 days from the decision of the three-judge panel, forward to the Supreme Court the decision of the panel, together with the panel's findings of fact and conclusions of law and the record of proceedings before the panel, which shall include the Commission's opinion, supporting findings of fact, and supporting record.

(j) The Supreme Court shall consider the record before it and may hear oral arguments on any issue it deems appropriate. The Court shall determine whether the defendant has established factual innocence before the three-judge panel by clear and convincing evidence and remand the case to the three-judge panel for action consistent with the Court's decision.

"**§ 15A-1470. No right to further review of decision by Commission or three-judge panel; defendant retains right to other postconviction relief.**

(a) Unless otherwise authorized by this Article, the decisions of the Commission and of the three-judge panel are final and are not subject to further review by appeal, certification, writ, motion, or otherwise.

(b) A claim of factual innocence asserted through the Innocence Inquiry Commission shall not adversely affect the defendant's rights to other postconviction relief."

SECTION 2. G.S. 15A-1401 reads as rewritten:

"**§ 15A-1401. Post-trial motions and appeal.**

Relief from errors committed in criminal trials and proceedings and other post-trial relief may be sought by:

(1) Motion for appropriate relief, as provided in Article 89.

(1a) Motion for innocence claim inquiry as provided in Article 92 of Chapter 15A of the General Statutes.

(2) Appeal and trial de novo in misdemeanor cases, as provided in Article 90.

(3) Appeal, as provided in Article 91."

SECTION 3. G.S. 15A-1417(a) reads as rewritten:

"(a) The following relief is available when the court grants a motion for appropriate relief:

(1) New trial on all or any of the charges.

(2) Dismissal of all or any of the charges.

(3) The relief sought by the State pursuant to G.S. 15A-1416.

(3a) For claims of factual innocence, referral to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes.

(4) Any other appropriate relief."

SECTION 4. G.S. 15A-1411 reads as rewritten:

"**§ 15A-1411. Motion for appropriate relief.**

(a) Relief from errors committed in the trial division, or other post-trial relief, may be sought by a motion for appropriate relief. Procedure for the making of the motion is as set out in G.S. 15A-1420.

(b) A motion for appropriate relief, whether made before or after the entry of judgment, is a motion in the original cause and not a new proceeding.

(c) The relief formerly available by motion in arrest of judgment, motion to set aside the verdict, motion for new trial, post-conviction proceedings, coram nobis and all other post-trial motions is available by motion for appropriate relief. The availability of relief by motion for appropriate relief is not a bar to relief by writ of habeas corpus.

(d) A claim of factual innocence asserted through the North Carolina Innocence Inquiry Commission does not constitute a motion for appropriate relief and does not impact rights or relief provided for in this Article."

SECTION 5. G.S. 15A-1418(b) reads as rewritten:

"(b) When a motion for appropriate relief is made in the appellate division, the appellate court must decide whether the motion may be determined on the basis of the materials before it, ~~or~~ whether it is necessary to remand the case to the trial division for taking evidence or conducting other ~~proceedings.~~ proceedings, or, for claims of factual innocence, whether to refer the case for further investigation to the North Carolina Innocence Inquiry Commission established by Article 92 of Chapter 15A of the General Statutes. If the appellate court does not remand the case for proceedings on the motion, it may determine the motion in conjunction with the appeal and enter its ruling on the motion with its determination of the case."

SECTION 6. G.S. 143-318.18 is amended by adding a new subdivision to read:

"(3a) The North Carolina Innocence Inquiry Commission."

SECTION 7. G.S. 132-1.4 reads as rewritten:

"**§ 132-1.4. Criminal investigations; intelligence information ~~records.~~records; Innocence Inquiry Commission records.**

(a) Records of criminal investigations conducted by public law enforcement ~~agencies or~~agencies, records of criminal intelligence information compiled by public law enforcement ~~agencies~~agencies, and records of investigations conducted by the North Carolina Innocence Inquiry Commission, are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

...."

SECTION 8. Beginning January 1, 2007, and annually thereafter, the North Carolina Innocence Inquiry Commission shall report on its activities to the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee and the State Judicial Council. The report may contain recommendations of any needed legislative changes related to the activities of the Commission. The report shall recommend the funding needed by the district attorney and the State Bureau of Investigation in order to meet their responsibilities under this act.

SECTION 9. The State Judicial Council shall report to the General Assembly and the Chief Justice no later than December 31, 2008, regarding the implementation of this act and shall include in its report the statistics regarding inquiries and any recommendations for changes.

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

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Thursday, August 11, 2005

The House Committee on Judiciary IV met on Thursday, August 11, 2005 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice Chair Glazier, Representatives Daughtry, Holloway, Justus, Martin, Parmon, and staff attorneys Steve Rose and Jennifer McGinnis. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order at 10:00 a.m. and introduced pages and sergeants-at-arms serving at the meeting.

Representative Margaret Dickson was introduced to speak on SB 737 – COUNTY GOV'T. CRIMINAL RECORD CHECKS. This bill gives counties the same authority to have background checks made by the state as cities have. Representative Dickson said she knows of no opposition to the bill, and that the counties very much want this authority.

Representative Parmon moved to give the bill a favorable report. The motion was adopted.

The meeting was adjourned at 10:06 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report, Bill, Bill Analysis, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, August 11, 2005
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

SB 737 AN ACT AUTHORIZING CRIMINAL RECORD CHECKS FOR COUNTY GOVERNMENTS, Senator Rand, Sponsor

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☐ Committee Substitute for

SB 737 A BILL TO BE ENTITLED AN ACT AUTHORIZING CRIMINAL RECORD CHECKS FOR COUNTY GOVERNMENTS.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 737

Judiciary I Committee Substitute Adopted 4/18/05

Short Title: County Gov't. Criminal Record Checks. (Public)

Sponsors:

Referred to:

March 22, 2005

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CRIMINAL RECORD CHECKS FOR COUNTY GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 114-19.14 reads as rewritten:

"**§ 114-19.14. Criminal record checks for ~~municipalities.~~municipalities and county governments.**

The Department of Justice may provide to a city or county from the State and National Repositories of Criminal Histories the criminal history of any person who applies for employment with the ~~city.~~ city or county. The city or county shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The city or county shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

SECTION 2. Article 5 of Chapter 153A of the General Statues is amended by adding a new section to read:

"**§ 153A-94.2. Criminal history record checks of employees permitted.**

The board of commissioners may adopt or provide for rules and regulations or ordinances concerning a requirement that any applicant for employment be subject to a criminal history record check of State and National Repositories of Criminal Histories conducted by the Department of Justice in accordance with G.S. 114-19.14. The local or

regional public employer may consider the results of these criminal history record checks in its hiring decisions."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 737:
County Gov't. Criminal Record Checks

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	August 11, 2005
Introduced by:	Sen. Rand	**Summary by:**	Steven Rose
Version:	Second Edition		Committee Counsel

SUMMARY: ***SB 737 gives county governments the authority to have criminal background checks performed by the SBI and FBI on its prospective employees and to use these background checks in determining employment.***

CURRENT LAW: Current law does not give county governments the authority to perform criminal background checks on its prospective employees. City governments were given the authority requested in this bill in 2003.

BILL ANALYSIS: Section 1 of the bill authorizes the Department of Justice (SBI) to conduct criminal history background checks on persons who apply for employment with a county, as is currently permitted for a city. The county would submit the prospective employee's fingerprints along with a form signed by the individual giving consent to the background check. The SBI would search the State's criminal history file and forward the information to the FBI for a national criminal history record check. Information obtained by the county is to be kept confidential. The SBI may charge a fee for this service but not more than the actual costs accrued.

Section 2 adds a new section that would give county governments, and other county hiring authorities (sheriffs, registers of deeds, county departments of social services, and others) the authority to perform criminal records background checks of their prospective employees. This authority mirrors the authority given to cities in 2003.

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

BACKGROUND: This bill is identical to HB 1133 as passed out of this committee on April 28, 2005 and passed by the House on May 11, 2005. HB 1133 is currently in the Senate Judiciary I Committee.

Walker Reagan, Committee Counsel to the Senate Judiciary I Committee, contributed substantially to this summary.

S0737e2-SMRL

House Pages

Name Of Committee: _____ Date: _____

1. Name: Chuckie Bass	Hope Peddle
County: Iredell	Stokes
Sponsor: Karen Ray	Rep. Carolina Dasmon
2. Name: Nathan Ashcraft	Jasmine Bulbard
County: Union	Robeson
Sponsor: Rep. Gibson	Rep. Sutton
3. Name: Abby Taylor	
County: Craven	
Sponsor: Virginia	
4. Name: Tyler Stone	
County: Cumberland	
Sponsor: Rep. Glazier	
5. Name: EVAN LEADEM	
County: ORANGE	
Sponsor: HACKNEY	

Sgt-At-Arms

1. Name: FRED HINES
2. Name: JIM WOMACK } House Sgt@Arms
3. Name: BRAD Bailey
4. Name: _____
5. Name: _____

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Monday, August 22, 2005

The House Committee on Judiciary IV met on Monday, August 22, 2005 in Room 1228 of the Legislative Office Building at 8:00 p.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice Chair Glazier, Vice Chair Kiser, Representatives Daughtry, Martin, Parmon, Ray and staff attorney Jennifer McGinnis. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss called the meeting to order at 8:10 p.m. She welcomed Senator Fletcher Hartsell and The Honorable Elaine Marshall, North Carolina Secretary of State, to the meeting.

Chairman Weiss said there is a Proposed House Committee Substitute for SB 671 - AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION. Representative Glazier moved to adopt the committee substitute for discussion purposes. The motion was adopted. Copies of the House Committee Substitute and a Memorandum to the House Judiciary IV Committee from the General Statutes Commission were distributed. A copy of each is attached to these minutes.

Senator Hartsell was introduced to speak on the bill. Senator Hartsell said this bill was needed to run in tandem with a bill that modified the notary laws and established standards for electronic notaries. The two bills have been consolidated into the House committee substitute for SB 671. The bill authorizes registers of deeds to receive, record, and retrieve real property documents and information in electronic form and provides that an electronic document and electronic signature satisfy State law that a real property document be an original, on paper, or in writing and that the document contain a signature. It requires a register of deeds who implements electronic recording to comply with uniform statewide standards, and it establishes a method for adopting these standards. A short discussion followed the explanation of the bill.

Secretary Marshall spoke on the second part of the bill, which is in two parts. The first part makes amendments to paper notary rules and policies, and closes gaps in the current law. The second part creates electronic notaries. It promulgates rules and sets standards that include security. This part of the bill is necessary for full implementation of the URPERA bill. She further stated that an Electronic Commerce Trust Fund has been established. They will commit two hundred thousand dollars of the two hundred fifty thousand dollars in the fund to begin a training program. More funding from the legislature will be needed in the future. Representative Parmon asked if training of electronic notaries is provided through the community colleges. Secretary Marshall replied that she would like the initial training to be done by her office and that, at this time, training is not available through the community colleges.

Representative Daughtry asked if there was any opposition to the bill. Secretary Marshall named a number of organizations that support the bill and said she knew of no opposition to the bill.

Mr. Chip Killian, representing the Association of Registers of Deeds, was recognized as attending the meeting.

Representative Parmon moved to give a favorable report to the House Committee Substitute, unfavorable to the original bill and to authorize staff to make technical, grammatical and conforming changes, and to recommend the bill be re-referred to the House Committee on Finance.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda, Committee Report, SB 671, General Statutes Commission Memorandum, House Committee Substitute, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Monday, August 22, 2005
Room 415 LOB
8:00 PM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA ITEM:

SB 671 - REAL PROPERTY ELECTRONIC RECORDING.
Senator Hartsell

ADJOURNMENT

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒Committee Substitute for
SB 671 A BILL TO BE ENTITLED AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 2

SENATE BILL 671*

Judiciary II Committee Substitute Adopted 5/4/05

Short Title: Real Property Electronic Recording. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Uniform Real Property Electronic Recording Act.

"**§ 47-16.1. Short title.**

This Article may be cited as the Uniform Real Property Electronic Recording Act.

"**§ 47-16.2. Definitions.**

In this Article:

(1) "Document" means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

b. Eligible to be recorded in the land records maintained by the register of deeds.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the register of deeds in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"**§ 47-16.3. Validity of electronic documents.**

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this Article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to notarize, acknowledge, verify, witness, or administer the oath, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. Nothing in this act shall prohibit the North Carolina Board of Examiners for Engineers and Surveyors from requiring that the image of a seal accompany any plat or map that is presented electronically for recording.

"**§ 47-16.4. Recording of documents.**

(a) In this section, "paper document" means a document that is received by the register of deeds in a form that is not electronic.

(b) A register of deeds:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards adopted by the Secretary of State.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the register of deeds began to record electronic documents.

(7) May accept electronically any fee or tax that the register of deeds is authorized to collect.

(8) May agree with other officials of this State or a political subdivision thereof on procedures or processes to facilitate the electronic satisfaction of conditions to recording and the electronic payment of fees and taxes.

"**§ 47-16.5. Administration and standards.**

(a) Standard-Setting Agency. – The Secretary of State shall adopt standards to implement this Article upon recommendation of the Electronic Recording Council. The Secretary of State may direct the Council to revise any portion of the recommended standards the Secretary determines to be out of compliance with existing law or not consistent with accepted industry technical standards and specifications necessary to maintain consistency and uniformity for nationwide electronic commerce.

Technological standards and specifications adopted by the Secretary of State to implement this Article are engineering standards for the purposes of G.S. 150B-2(8a)h.

(b) Electronic Recording Council Created. – The Electronic Recording Council is created in the Department of the Secretary of State to advise and assist the Secretary of State in the adoption of standards to implement this Article. The Council shall review the functions listed in G.S. 47-16.4 and shall formulate and recommend to the Secretary standards for recording electronic documents and implementing the other functions listed in G.S. 47-16.4. The Council shall report its findings and recommendations to the Secretary of State at least once each calendar year. The Council shall advise the Secretary of State on a continuing basis of the need to adopt, amend, revise, or repeal standards. The Council may advise the Secretary of State on any other matter the Secretary refers to the Council.

(c) Council Membership, Terms, and Vacancies. – The Council shall consist of 13 members as follows:

(1) Seven members appointed by the North Carolina Association of Registers of Deeds. It is the intent of the General Assembly that the North Carolina Association of Registers of Deeds shall appoint as members a representative selection of registers of deeds from large, medium, and small counties, urban and rural counties, and the different geographic areas of this State.

(2) One member appointed by the North Carolina Bar Association.

(3) One member appointed by the North Carolina Society of Land Surveyors.

(4) One member appointed by the North Carolina Bankers Association.

(5) One member appointed by the North Carolina Land Title Association.

(6) One member appointed by the North Carolina Association of Assessing Officers.

(7) The Secretary of Cultural Resources or the Secretary's designee.

In making appointments to the Council, each appointing authority shall select appointees with the ability and commitment to fulfill the purposes of the Council.

Appointed members shall serve four-year terms, except that the initial appointments by the North Carolina Bar Association, the North Carolina Bankers Association, the North Carolina Association of Assessing Officers, and three of the initial appointments by the North Carolina Association of Registers of Deeds shall be for two years. All initial terms shall commence on the effective date of this Article. Members shall serve until their successors are appointed. An appointing authority may reappoint a member for successive terms. A vacancy on the Council shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(d) Council Meetings and Officers. – The Secretary of State shall call the first meeting of the Council. At the first meeting and biennially thereafter, the Council shall elect from its membership a chair and a vice-chair to serve two-year terms. Meetings may be called by the chair, the vice-chair, or the Secretary of State. Meetings shall be held as often as necessary, but at least once a year.

(e) Council Compensation. – None of the members of the Council shall receive compensation for serving on the Council, but Council members shall receive per diem, subsistence, and travel expenses in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

(f) Staff and Other Assistance. – As soon as practicable and as needed thereafter, the Council shall identify the information technology expertise it needs and report its needs to the Secretary of State. The Council shall also report any other expertise needed to fulfill its responsibilities. The Secretary of State shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Council to carry out its duties in an effective manner. The Secretary of State may appoint additional committees to advise and assist the Council in its work.

The Council shall consult with the North Carolina Local Government Information Systems Association, and may consult with any other person the Council deems appropriate, to advise and assist the Council in its work.

(g) Uniformity of Standards. – To keep the standards and practices of registers of deeds in this State in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this Article and to keep the technology used by registers of deeds in this State compatible with technology used by recording offices in other jurisdictions that enact substantially this Article, the Secretary of State and the Council shall consider all of the following in carrying out their responsibilities under this Article, so far as is consistent with its purposes, policies, and provisions:

(1) Standards and practices of other jurisdictions.

(2) The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.

(3) The views of interested persons and other governmental officials and entities.

(4) The needs of counties of varying size, population, and resources.

"**§ 47-16.6. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to promoting uniformity of interpretation of the Uniform Real Property Electronic Recording Act among states that enact it.

"**§ 47-16.7. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b))."

SECTION 2. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Real Property Electronic Recording Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 3. This act is effective when it becomes law.

State of North Carolina
General Statutes Commission
9001 Mail Service Center
RALEIGH, NORTH CAROLINA
27699-9001

MEMORANDUM

TO: House Judiciary IV Committee

FROM: General Statutes Commission

DATE: June 8, 2005

RE: **Senate Bill 671 (Real Property Electronic Recording)**

General Comments

This bill enacts a North Carolina version of the Uniform Electronic Recording Act (URPERA), which was adopted in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL). URPERA expressly authorizes registers of deeds to receive, record, and retrieve real property documents and information in electronic form and provides that a document in electronic form and an electronic signature satisfy, respectively, State law requirements that a real property document be an original, on paper, or in writing and that the document contain a signature. It also requires a register of deeds who implements electronic recording to comply with uniform statewide standards, and it establishes a method for adopting these standards.

Limited experiments with recording electronic documents have already been initiated in this State under S.L. 2002-115, as amended by S.L. 2003-326, a local act authorizing the electronic recording of documents in Mecklenburg, Cabarrus, Durham, Harnett, Moore, New Hanover, and Randolph Counties. The Register of Deeds of Mecklenburg County has implemented an electronic recordation system and has been accepting deed of trust cancellations electronically. Other registers of deeds are interested in following her example. Section 6.1 of Part VI of Session Law 2004-161 (Studies Act of 2004) required the General Statutes Commission (Commission) to study methods for establishing uniform legal standards for electronic recording (specifically, receipt, recordation, authentication, preservation, and retrieval of electronic documents). The study charge included a review of URPERA, the main goal of which is to provide for the acceptance and processing of electronic land records in accordance with uniform standards.

The Commission conducted its review and concluded that, based on the information before it, URPERA was an effective means of establishing electronic recordation of land records

in this State. The Commission's review and conclusions are set out in its report to the 2005 General Assembly and its supplement to that report.

Specific Comments

Section 1 enacts a version of URPERA as Article 1A of Chapter 47 of the General Statutes.

Proposed § 47-16.1 ("Short title") contains the article title (the "Uniform Real Property Electronic Recording Act").

Proposed § 47-16.2 ("Definitions") contains key definitions that were taken from the Uniform Electronic Transactions Act (UETA), which this State adopted as Article 40 of Chapter 66 of the General Statutes. The definitions of "electronic" and "electronic signature" are the same as UETA's, and the definitions of "document" and "electronic document" are based on UETA's definitions of "record" and "electronic record."

Proposed § 47-16.3 ("Validity of electronic documents") overlaps UETA. Although nothing in UETA prevents it from applying to electronic real property documents, which are apparently valid and enforceable as between the parties under UETA, there is no broad agreement nationwide that these documents can be recorded. Proposed § 47-16.3 eliminates such doubts by providing in essence that electronic documents and electronic signatures are acceptable. The section also eliminates any requirement that a notary's electronic stamp or seal be an actual image. The Senate Judiciary II Committee added a provision preserving the authority of the North Carolina Board of Examiners for Engineers and Surveyors to require that the image of a seal accompany a plat or map.

Proposed § 47-16.4 ("Recording of documents") expressly authorizes registers of deeds to accept electronic documents for recordation but requires conformity with standards adopted by the Secretary of State to implement URPERA. It does not compel a register of deeds to implement electronic recording. The section contains a list of specifically authorized functions that are related to electronic filing. It does not itself, however, contain any requirements related to security or authentication.

Proposed § 47-16.5 ("Administration and standards") adopts a standard-setting approach that is different from the Uniform Act. URPERA contains two alternatives for a standard-setting entity: a new independent commission with a majority of registers of deeds or an existing State agency. The approach taken in this bill blends URPERA's alternatives, due to various factors described in the supplement to the Commission's report.

Proposed § 47-16.5 authorizes the Secretary of State to adopt standards to implement URPERA on the recommendation of a new advisory body, the Electronic Recording Council (Council). The Council is responsible for developing and recommending to the Secretary of State initial standards to implement URPERA and, on an ongoing basis, any changes to the standards that may be needed. The Council is required to meet at least once a year and to make an annual report to the Secretary. As amended in the Senate Judiciary II Committee, proposed §

47-16.5(a) allows the Secretary to direct the Council to revise any portion of the Council's recommended standards that the Secretary determines to be out of compliance with existing law or not consistent with necessary nationwide standards.

The Council has 13 members and is located within the Department of Secretary of State for organizational, budgetary, and administrative purposes. Of its members, 12 are appointed as follows: seven by the North Carolina Association of Registers of Deeds, one by the North Carolina Bar Association, one by the North Carolina Society of Land Surveyors, one by the North Carolina Bankers Association, one by the North Carolina Land Title Association, and one by the North Carolina Association of Assessing Officers. These members serve staggered four-year terms. The remaining member is the Secretary of Cultural Resources or the Secretary's designee. The fact that a majority of the members are registers of deeds is consistent with URPERA's first alternative.

Because the Council must be a working body, a group small in size is important. In discussing the Council's composition, the Commission recognized that all groups that could be affected or might make a contribution could not be directly represented on the Council without creating a body of 25 to 30 members, which would be unworkable. The Commission attempted to include the groups most affected on the Council and provide a vehicle for contribution from others through consultation requirements and the option for additional committees to advise the Council.

The Commission recommends direct appointments to the Council, rather than nominations with appointments by some other authority, to reduce the time required for the Council to begin operating, being of the opinion that direct appointments can be appropriate for an advisory body. Speed in implementing URPERA was a concern expressed by different groups who spoke to the Commission.

In the interest of national uniformity, proposed § 47-16.5 also requires both the Council and the Secretary of State to consider a list of factors in adopting standards for this State, including standards set by national bodies and by other jurisdictions.

Proposed § 47-16.6 ("Uniformity of application and construction") establishes uniformity of interpretation as a goal among states enacting URPERA.

Proposed § 47-16.7 ("Relation to Electronic Signatures in Global and National Commerce Act") covers the relationship between URPERA and the federal Electronic Signatures in Global and National Commerce Act (E-Sign).

Section 2 authorizes the Revisor of Statutes to print official and drafters' comments.

Section 3 provides that the act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 671*

Judiciary II Committee Substitute Adopted 5/4/05

PROPOSED HOUSE COMMITTEE SUBSTITUTE S671-PCS55281-RCf-92

Short Title: Real Prop. Electronic Recording/Notary Act. (Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO REPEAL CHAPTER 10A OF THE GENERAL STATUTES REGARDING THE REGULATION OF NOTARIES PUBLIC, AND TO ENACT CHAPTER 10B RELATING TO NOTARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Uniform Real Property Electronic Recording Act.

"**§ 47-16.1. Short title.**

This Article may be cited as the Uniform Real Property Electronic Recording Act.

"**§ 47-16.2. Definitions.**

In this Article:

(1) "Document" means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

b. Eligible to be recorded in the land records maintained by the register of deeds.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the register of deeds in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"**§ 47-16.3. Validity of electronic documents.**

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this Article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to notarize, acknowledge, verify, witness, or administer the oath, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature. Nothing in this act shall prohibit the North Carolina Board of Examiners for Engineers and Surveyors from requiring that the image of a seal accompany any plat or map that is presented electronically for recording.

"**§ 47-16.4. Recording of documents.**

(a) In this section, "paper document" means a document that is received by the register of deeds in a form that is not electronic.

(b) A register of deeds:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards adopted by the Secretary of State.

(2) May receive, index, store, archive, and transmit electronic documents.

(3) May provide for access to, and for search and retrieval of, documents and information by electronic means.

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by law and shall place entries for both types of documents in the same index.

(5) May convert paper documents accepted for recording into electronic form.

(6) May convert into electronic form information recorded before the register of deeds began to record electronic documents.

(7) May accept electronically any fee or tax that the register of deeds is authorized to collect.

(8) May agree with other officials of this State or a political subdivision thereof on procedures or processes to facilitate the electronic satisfaction of conditions to recording and the electronic payment of fees and taxes.

"**§ 47-16.5. Administration and standards.**

(a) Standard-Setting Agency. – The Secretary of State shall adopt standards to implement this Article upon recommendation of the Electronic Recording Council. The

Secretary of State may direct the Council to revise any portion of the recommended standards the Secretary deems inadequate or inappropriate. Technological standards and specifications adopted by the Secretary of State to implement this Article are engineering standards for the purposes of G.S. 150B-2(8a)h.

(b) Electronic Recording Council Created. – The Electronic Recording Council is created in the Department of the Secretary of State to advise and assist the Secretary of State in the adoption of standards to implement this Article. The Council shall review the functions listed in G.S. 47-16.4 and shall formulate and recommend to the Secretary standards for recording electronic documents and implementing the other functions listed in G.S. 47-16.4. The Council shall report its findings and recommendations to the Secretary of State at least once each calendar year. The Council shall advise the Secretary of State on a continuing basis of the need to adopt, amend, revise, or repeal standards. The Council may advise the Secretary of State on any other matter the Secretary refers to the Council.

(c) Council Membership, Terms, and Vacancies. – The Council shall consist of 13 members as follows:

(1) Seven members appointed by the North Carolina Association of Registers of Deeds. It is the intent of the General Assembly that the North Carolina Association of Registers of Deeds shall appoint as members a representative selection of registers of deeds from large, medium, and small counties, urban and rural counties, and the different geographic areas of this State.

(2) One member appointed by the North Carolina Bar Association.

(3) One member appointed by the North Carolina Society of Land Surveyors.

(4) One member appointed by the North Carolina Bankers Association.

(5) One member appointed by the North Carolina Land Title Association.

(6) One member appointed by the North Carolina Association of Assessing Officers.

(7) The Secretary of Cultural Resources or the Secretary's designee.

In making appointments to the Council, each appointing authority shall select appointees with the ability and commitment to fulfill the purposes of the Council.

Appointed members shall serve four-year terms, except that the initial appointments by the North Carolina Bar Association, the North Carolina Bankers Association, the North Carolina Association of Assessing Officers, and three of the initial appointments by the North Carolina Association of Registers of Deeds shall be for two years. All initial terms shall commence on the effective date of this Article. Members shall serve until their successors are appointed. An appointing authority may reappoint a member for successive terms. A vacancy on the Council shall be filled in the same manner in which the original appointment was made, and the term shall be for the balance of the unexpired term.

(d) Council Meetings and Officers. – The Secretary of State shall call the first meeting of the Council. At the first meeting and biennially thereafter, the Council shall elect from its membership a chair and a vice-chair to serve two-year terms. Meetings

may be called by the chair, the vice-chair, or the Secretary of State. Meetings shall be held as often as necessary, but at least once a year.

(e) Council Compensation. – None of the members of the Council shall receive compensation for serving on the Council, but Council members shall receive per diem, subsistence, and travel expenses in accordance with G.S. 138-5 and G.S. 138-6, as applicable.

(f) Staff and Other Assistance. – As soon as practicable and as needed thereafter, the Council shall identify the information technology expertise it needs and report its needs to the Secretary of State. The Council shall also report any other expertise needed to fulfill its responsibilities. The Secretary of State shall provide professional and clerical staff and other services and supplies, including meeting space, as needed for the Council to carry out its duties in an effective manner. The Secretary of State may appoint additional committees to advise and assist the Council in its work.

The Council shall consult with the North Carolina Local Government Information Systems Association, and may consult with any other person the Council deems appropriate, to advise and assist the Council in its work.

(g) Uniformity of Standards. – To keep the standards and practices of registers of deeds in this State in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially this Article and to keep the technology used by registers of deeds in this State compatible with technology used by recording offices in other jurisdictions that enact substantially this Article, the Secretary of State and the Council shall consider all of the following in carrying out their responsibilities under this Article, so far as is consistent with its purposes, policies, and provisions:

(1) Standards and practices of other jurisdictions.

(2) The most recent standards adopted by national standard-setting bodies, such as the Property Records Industry Association.

(3) The views of interested persons and other governmental officials and entities.

(4) The needs of counties of varying size, population, and resources.

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

"**§ 47-16.6. Uniformity of application and construction.**

In applying and construing this Article, consideration shall be given to promoting uniformity of interpretation of the Uniform Real Property Electronic Recording Act among states that enact it.

"**§ 47-16.7. Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b))."

SECTION 2. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Real Property Electronic Recording Act and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

SECTION 3. Chapter 10A of the General Statutes is repealed.

SECTION 4. The General Statutes are amended by adding a new Chapter to read:

"**Chapter 10B.**

"**Notaries.**

"Article 1.

"Notary Public Act.

"Part 1. General Provisions.

"**§ 10B-1. Short title.**

This act is the "Notary Public Act" and may be cited by that name.

"**§ 10B-2. Purposes.**

This Chapter shall be construed and applied to advance its underlying purposes, which are the following:

(1) To promote, serve, and protect the public interests.

(2) To simplify, clarify, and modernize the law governing notaries.

(3) To prevent fraud and forgery.

(4) To foster ethical conduct among notaries.

(5) To enhance interstate recognition of notarial acts.

(6) To integrate procedures for traditional paper and electronic notarial acts.

"**§ 10B-3. Definitions.**

The following definitions apply in this Chapter:

(1) "Acknowledgment" means a notarial act in which an individual, at a single time and place:

a. Appears in person before the notary and presents a record; and

b. Is personally known to the notary or identified by the notary through satisfactory evidence and indicates to the notary that the signature on the record was voluntarily affixed by the individual for the purposes stated within the record.

(2) "Affirmation" means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:

a. Appears in person before the notary;

b. Is personally known to the notary or identified by the notary through satisfactory evidence; and

c. Makes a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".

(3) "Attest" or "attestation" means the act of completing the written evidence of a notarial act, to wit: completion of a certificate by a

notary who has performed a notarial act by witnessing a signature or administering an oath or affirmation.

(4) "Commission" means the empowerment to perform notarial acts and the written evidence of authority to perform those acts.

(5) "Credible witness" means an honest, reliable, and impartial person who is personally known to the notary and takes an oath or affirmation from the notary to confirm a signer's identity.

(6) "Department" means the North Carolina Department of the Secretary of State.

(7) "Director" means the Division Director for the North Carolina Department of the Secretary of State Notary Public Section.

(8) "Jurat" means a certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the ___ day of _____ 20__." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:

a. That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;

b. That the signer appeared before the notary on the date indicated;

c. That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.

(9) "Moral turpitude" means conduct contrary to expected standards of honesty, morality, or integrity.

(10) "Nickname" means a descriptive, familiar, or shortened form of a proper name.

(11) "Notarial act," "notary act," and "notarization" mean the act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under this Chapter, as authorized by G.S. 10B-20.

(12) "Notarial certificate" and "certificate" mean the portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.

(13) "Notary public" and "notary" mean a person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.

(14) "Oath" means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

a. Appears in person before a notary;

b. Is personally known to the notary or identified by the notary through satisfactory evidence; and

c. Makes a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".

(15) "Official misconduct" means either of the following:

a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.

b. A notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.

(16) "Personal appearance" and "appear in person before a notary" mean an individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

(17) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(18) "Principal" means an individual whose signature is notarized; or an individual other than a credible witness, taking an oath or affirmation from the notary.

(19) "Record" means information that is inscribed on a tangible medium and called a traditional or paper record.

(20) "Regular place of work or business" means a location, office or other workspace, where an individual regularly spends all or part of the individual's work time.

(21) "Revocation" means the cancellation of the notary's commission stated in the order of revocation.

(22) "Satisfactory evidence of a signer's identity" means identification of an individual based on either of the following:

a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

b. The oath or affirmation of one credible witness unaffected by the record or transaction who is personally known to the notary and who personally knows the individual seeking to be identified.

(23) "Seal" and "stamp" mean a device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-24.

(24) "Secretary" means the North Carolina Secretary of State or the Secretary's designee.

(25) "Signature" means the act of personally signing one's name in ink by hand.

(26) "Subscribing witness" means a person who either watches another individual sign a record or takes that individual's acknowledgment of an already-signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign.

(27) "Suspension" and "restriction" means the termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.

(28) "Verification" or "proof" means a notarial act where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already-executed record.

"Part 2. Commissioning.

"**§ 10B-4. Qualifications.**

(a) Except as provided in subsection (d) of this section, the Secretary shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.

(2) Reside or have a regular place of work or business in this State.

(3) Reside legally in the United States.

(4) Speak, read, and write the English language.

(5) Possess a high school diploma or equivalent.

(6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.

(7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.

(8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(9) Pay a nonrefundable application fee of fifty dollars ($50.00).

(c) The notary shall be commissioned in his or her county of residence, unless the notary is not a North Carolina resident, in which case he or she shall be commissioned in the county of his or her employment or business.

(d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:

(1) Submission of an incomplete application or an application containing material misstatement or omission of fact.

(2) The applicant's conviction or plea of admission or nolo contendere to a felony or any crime involving dishonesty or moral turpitude. In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.

(3) A finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit.

(4) The revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or nation. In no case may a commission be issued to an applicant within five years after the completion of all conditions of any disciplinary order.

(5) A finding that the applicant has engaged in official misconduct, whether or not disciplinary action resulted.

(6) An applicant knowingly using false or misleading advertising in which the applicant as a notary represents that the applicant has powers, duties, rights, or privileges that the applicant does not possess by law.

(7) A finding by a state bar or court that the applicant has engaged in the unauthorized practice of law.

"**§ 10B-5. Application for commission.**

Every application for a notary commission shall be made on paper with original signatures, or in another form determined by the Secretary, and shall include all of the following:

(1) A statement of the applicant's personal qualifications as required by this Chapter.

(2) A certificate or signed statement by the instructor evidencing successful completion of the course of instruction as required by this Chapter.

(3) A notarized declaration of the applicant, as required by this Chapter.

(4) Any other information that the Secretary deems appropriate.

(5) The application fee required by this Chapter.

"**§ 10B-6. Statement of personal qualification.**

(a) The application for a notary commission shall include at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.

(2) The applicant's date of birth.

(3) The mailing address for the applicant's residence, the street address for the applicant's residence, and the telephone number for the applicant's residence.
(4) The applicant's county of residence.
(5) The name of the applicant's employer, the street and mailing address for the applicant's employer, and telephone number for the applicant's employer.
(6) The applicant's last four digits of the applicant's social security number.
(7) The applicant's personal and business e-mail addresses.
(8) A declaration that the applicant is a citizen of the United States or proof of the applicant's legal residency in this country.
(9) A declaration that the applicant can speak, read, and writes in the English language.
(10) A complete listing of any issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license, or public office involving the applicant in this or any other state or nation.
(11) A complete listing of any criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other state or nation.
(12) A complete listing of any civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other state or nation.

(b) The information contained in an application under this section is a public record as defined in G.S 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes.

"**§ 10B-7. Course of study and examination.**

(a) Every applicant for an initial notary commission shall, within the three months preceding application, take a course of classroom instruction of not less than six hours approved by the Secretary and take a written examination approved by the Secretary. An applicant must answer at least eighty percent (80%) of the questions correctly in order to pass the exam. This subsection shall not apply to a licensed member of the North Carolina State Bar.

(b) Every applicant for recommissioning shall pass a written examination approved by and administered by or under the direction of the Secretary, unless the person is a licensed member of the North Carolina State Bar.

(c) The content of the course of instruction and the written examinations shall be notarial laws, procedures, and ethics.

(d) The Secretary may charge such fees as are reasonably necessary to pay the cost associated with developing and administering examinations permitted by this Chapter and for conducting the training of notaries and notary instructors. All funds

received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-58.

"**§ 10B-8. Length of term and jurisdiction.**

A person commissioned under this Chapter may perform notarial acts in any part of this State for a term of five years, unless the commission is earlier revoked or resigned. No commissions shall be effective prior to the administration of the oath of office. Any notarial acts performed before the administration of the oath of office, either the original commissioning or recommissioning, are invalid.

"**§ 10B-9. Commission; oath of office.**

(a) If the Secretary grants a commission to an applicant, the Secretary shall notify the appointee and shall instruct the appointee regarding the proper procedure for taking the oath at the register of deeds office in the county of the appointee's commissioning.

(b) The appointee shall appear before the register of deeds no later than 45 days after commissioning and shall be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7.

(c) The register of deeds shall then place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public.

(d) The register of deeds shall deliver the commission to the notary following completion of the requirements of this section and shall notify the Secretary of the delivery.

(e) If the appointee does not appear before the register of deeds within 45 days of commissioning, the register of deeds must return the commission to the Secretary, and the appointee must reapply for commissioning. If the appointee reapplies within one year of the granting of the commission, the Secretary may waive the educational requirements of this Chapter.

"**§ 10B-10. Recommissioning.**

(a) A commissioned notary may apply for recommissioning no earlier than 10 weeks prior to the expiration date of the notary's commission.

(b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:

(1) Submit a new application under G.S. 10B-5.

(2) Meet the requirements of G.S. 10B-4(b).

(3) Pass the written examination required under G.S. 10B-7, unless the notary is a licensed member of the North Carolina State Bar.

(c) An individual may apply for recommissioning within one year after the expiration of the individual's commission. The individual must comply with the

requirement of subsection (b) of this section. The individual must also fulfill the educational requirement under G.S. 10B-7(a), unless the Secretary waives that requirement.

"**§ 10B-11. Notarized declaration.**

The application for a notary public commission shall contain the following declaration to be executed by each applicant under oath:

Declaration of Applicant

I, _____ (name of applicant), solemnly swear or affirm under penalty of perjury that the information in this application is true, complete, and correct; that I understand the official duties and responsibilities of a notary public in this State, as described in the statutes; and that I will perform to the best of my ability all notarial acts in accordance with the law.

_____

(signature of applicant)

"**§ 10B-12. Application fee.**

Every applicant for a notary commission shall pay to the Secretary a nonrefundable application fee of fifty dollars ($50.00).

"**§ 10B-13. Instructor's certification.**

(a) The course of study required by G.S. 10B-4(b) shall be taught by an instructor certified under rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass an instructor certification course of not less than six hours taught by the Director or other person approved by the Secretary.
(2) Have at least one year of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Possess the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

(b) Certification to teach a course of study for notaries shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars ($50.00). All funds received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-60.

(c) The following individuals may be certified to teach a course of study for notaries public without paying the fee required by this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.
(2) Clerks of court.
(3) The Director and other duly authorized employees of the Secretary.

(d) Former registers of deeds and clerks of court who have been certified as notary public instructors must apply for commissioning as a notary public but are

exempt from the education requirements of G.S. 10B-7 after successful completion of an examination administered by the Secretary.

(e) Assistant and deputy registers of deeds and assistant and deputy clerks of court must have a regular notary commission prior to receiving a certification or recertification as a notary public instructor.

(f) The Secretary may suspend or revoke the certification of a notary instructor for violating the provisions of this Chapter or any of the administrative rules implementing it.

"Part 3. Notarial Acts, Powers, and Limitations.

"**§ 10B-14. Powers and limitations.**

(a) A notary may perform any of the following notarial acts:

(1) Acknowledgments.

(2) Oaths and affirmations.

(3) Execute jurats.

(4) Verifications or proofs.

(b) A notarial act shall be attested by all of the following:

(1) The signature of the notary, exactly as shown on the notary's commission.

(2) The readable appearance of the notary's name, from the notary's typed or printed name near the signature.

(3) The clear and legible appearance of the notary's stamp or seal.

(4) A statement of the date the notary's commission expires.

(c) A notary is disqualified from performing a notarial act if any of the following apply:

(1) The principal or subscribing witness is not in the notary's presence at the time the notarial act is to be performed; however, nothing in this Chapter shall require a notary to complete the certificate in the presence of the principal or subscribing witness.

(2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.

(3) The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.

(4) The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.

(5) The notary is a signer of or is named, other than as a trustee in a deed of trust, in the document that is to be notarized.

(6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-20, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker.

(d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:

(1) The mark is affixed in the presence of the notary;

(2) The notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of undersigned notary"; and

(3) The notary notarizes the signature by performing an acknowledgment, oath or affirmation, jurat, or verification or proof.

(e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:

(1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;

(2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses;

(3) Both witnesses sign their own names to the record near the principal's signature;

(4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names and addresses of principal and witnesses)"; and

(5) The notary notarizes the signature through an acknowledgment, oath or affirmation, jurat, or verification or proof.

(f) A notarial act performed in another jurisdiction in compliance with the laws of that jurisdiction is valid to the same extent as if it had been performed by a notary commissioned under this Chapter if the notarial act is performed by a notary public of that jurisdiction or by any person authorized to perform notarial acts in that jurisdiction under the laws of that jurisdiction , the laws of this State, or federal law.

(g) Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents.

(h) The Secretary and register of deeds in the county in which a notary qualified may certify to the commission of the notary.

(i) A notary public who is not an attorney licensed to practice law in this State who advertises the person's services as a notary public in a language other than English, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in the language used for the advertisement. The notice shall be of conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(j) A notary public who is not an attorney licensed to practice law in this State is prohibited from representing or advertising that the notary public is an "immigration consultant" or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the Board of Immigration Appeals pursuant to Title 8, Part 292, section 2(a-e) of the Code of Federal Regulations (8 C.F.R. § 292.2(a-e)).

(k) A notary public who is not an attorney licensed to practice law in this State is prohibited from rendering any service that constitutes the unauthorized practice of law. A nonattorney notary shall not assist another person in drafting, completing, selecting, or understanding a record or transaction requiring a notarial act.

(l) A notary public required to comply with the provisions of subsection (g) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business.

(m) If notarial certificate wording is not provided or indicated for a record, a nonattorney notary shall not determine the type of notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law.

(n) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.

(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate. However:

(1) Notwithstanding the provisions of this section or G.S. 10B-22(b), a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;

(2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and

(3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration.

"**§ 10B-15. Notaries ex officio.**

(a) The clerks of the superior court may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.
(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Office of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.
(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary and may certify a notarial act performed in that capacity under the seal of the Secretary.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10B-20. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10B-4.

"**§ 10B-16. False certificate.**

(a) A notary shall not execute a notarial certificate containing information known or believed by the notary to be false.

(b) A notary shall not execute a certificate that is not written in the English language. A notary may execute a certificate written in the English language that accompanies a record written in another language, which record may include a translation of the notarial certificate into the other language. In those instances, the notary shall execute only the English language certificate.

"**§ 10B-17. Improper records.**

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph.

"**§ 10B-18. Testimonials.**

A notary shall not use the official notary title or seal in a manner intended to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering. This section does not prohibit a notary public from performing a notarial act upon a record executed by another individual.

"Part 4. Fees.

"**§ 10B-19. Imposition and waiver of fees.**

(a) For performing a notarial act, a notary may charge up to the maximum fee specified in this Chapter.

(b) A notary shall not discriminatorily condition the fee for a notarial act on any attribute of the principal that would constitute unlawful discrimination.

(c) Nothing in this Chapter shall compel a notary to charge a fee.

"**§ 10B-20. Fees for notarial acts.**

The maximum fees that may be charged by a notary for notarial acts are as follows:

(1) For acknowledgments, jurats, verifications or proofs, five dollars ($5.00) per principal signature.

(2) For oaths or affirmations without a signature, five dollars ($5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for a principal's identity.

"**§ 10B-21. Notice of fees.**

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for notarial acts. No part of any notarial fee schedule shall be printed in smaller than 10-point type.

"Part 5. Signature and Seal.

"**§ 10B-22. Official signature.**

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

"**§ 10B-23. Official seal.**

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

"**§ 10B-24. Seal image.**

(a) Near the notary's official signature on the notarial certificate of a paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal.

(b) A notary's official seal shall include only the following elements:

(1) The notary's name exactly as commissioned;

(2) The words "Notary Public";

(3) The county of commissioning, including the word "County" or the abbreviation "Co."; and

(4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. The circular seal shall not be less than 1 1/2 inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 1/2 inches long. The perimeter of the seal shall contain a border that is visible when impressed.

(d) A notarial seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.

"Part 6. Certificate Forms.

"**§ 10B-25. Notarial certificates in general.**

(a) A notary shall not make or give a notarial certificate unless the notary has either (i) personal knowledge of the identity of the principal or, if applicable, the subscribing witness, or (ii) satisfactory evidence of a signer's identity.

(b) A notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth

in G.S. 10B-26, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the acknowledgment occurred;
(2) Names the principal who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
(4) Indicates that the principal who appeared in person before the notary acknowledged that the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein;
(5) States the date of the acknowledgment;
(6) Contains the signature and seal or stamp of the notary who took the acknowledgment; and
(7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-27, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the verification or proof occurred;
(2) Names the subscribing witness who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;
(4) Names the principal whose signature on the record is to be verified or proven;
(5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed record;
(6) States the date of the verification or proof;
(7) Contains the signature and seal or stamp of the notary who took the verification or proof; and
(8) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-28, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

(1) Identifies the state and county in which the oath or affirmation occurred;
(2) Names the principal who appeared in person before the notary;
(3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
(4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the record;
(5) States the date of the oath or affirmation;
(6) Contains the signature and seal or stamp of the notary who took the oath or affirmation; and
(7) States the notary's commission expiration date.

(e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.

(f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.

(g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate (including, but not limited to, G.S. 31-11.6, Chapter 32A of the General Statutes, and G.S. 90-321). However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part.

"**§ 10B-26. Notarial certificate for an acknowledgment.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: *name(s) of principal(s).*

Date: _____ *Official Signature of Notary*

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;

(2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;

(3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and

(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"**§ 10B-27. Notarial certificate for a verification or proof.**

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that *name of subscribing witness* personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed *name of principal* (the principal) sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: _____ *Official Signature of Notary*

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the subscribing witness appeared in person before the notary on the date indicated;

(2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal

sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already-signed record; and

(3) That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.

"**§ 10B-28. Notarial certificate for an oath or affirmation.**

(a) When properly completed by a notary, a notarial certificate in substantially either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

_____ County, North Carolina

Signed and sworn to (or affirmed) before me this day by *name of principal.*

Date: _____ *Official Signature of Notary*

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

-OR-

_____ County, North Carolina

Sworn to (or affirmed) and subscribed before me this day by *name of principal.*

Date: _____ *Official Signature of Notary*

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal appeared in person before the notary on the date indicated;

(2) That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;

(3) That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; and

(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"Part 7. Changes in Status.

"**§ 10B-29. Change of address.**

Within 45 days after the change of a notary's residence, business, or any mailing address or telephone number, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change, giving both old and new addresses or telephone numbers.

"**§ 10B-30. Change of name.**

(a) Within 45 days after the legal change of a notary's name, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change. The notice shall include both the notary's former name and the notary's new name.

(b) A notary with a new name may continue to use the former name in performing notarial acts until all of the following steps have been completed:

(1) The notary receives a confirmation of Notary's Name Change from the Secretary.

(2) The notary obtains a new seal bearing the new name exactly as that name appears in the confirmation from the Secretary.

(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of the effective date of the change to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and to have the notary public record changed to reflect the new commissioned name.

(c) Upon completion of the requirements in subsection (b) of this section, the notary shall use the new name.

"**§ 10B-31. Change of county.**

(a) A notary who has moved to another county in North Carolina remains commissioned until the current commission expires, is not required to obtain a new seal, and may continue to notarize without changing his or her seal.

(b) When a notary who has moved applies to be recommissioned, if the commission is granted the, Secretary shall issue a notice of recommissioning. The commission applicant shall then do all of the following:

(1) Obtain a new seal bearing the new county exactly as in the notice of recommissioning.

(2) Appear before the register of deeds to which the commission was delivered within 45 days of recommissioning, to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new county and to have the notary public record changed to reflect the new county name.

"**10B-32. Change of both name and county.**

(a) Within 45 days after the legal change of a notary's name, and if the notary has also moved to a different county than as last commissioned, the notary shall submit to the Secretary a recommissioning application and fee pursuant to this Chapter. The notary may continue to perform notarial acts under the notary's previous name and seal until all of the following steps have been completed:

(1) The notary receives a transmittal receipt of reappointment due to name and county change from the Secretary.

(2) The notary obtains a new seal bearing the new name and county exactly as those items appear in the transmittal receipt.

(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of recommissioning to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and county and to have the notary public record changed to reflect the new name and county.

"**§ 10B-33. Resignation.**

(a) A notary who resigns the notary's commission shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice indicating the effective date of resignation.

(b) Notaries who cease to reside in or to maintain a regular place of work or business in this State, or who become permanently unable to perform their notarial duties, shall resign their commissions and shall deliver their seals to the Secretary by certified mail, return receipt requested.

"**§ 10B-34. Disposition of seal; death of notary.**

(a) When a notary commission is resigned or revoked, the notary shall deliver the notary's seal to the Secretary within 45 days of the resignation or revocation. Delivery shall be accomplished by certified mail, return receipt requested. The Secretary shall destroy any seal received under this subsection.

(b) A notary whose commission has expired and whose previous commission or application was not revoked or denied by this State, is not required to deliver the seal to the Secretary as provided under subsection (a) of this section if the notary intends to apply to be recommissioned and is recommissioned within three months after the notary's commission expires.

(c) If a notary dies while commissioned or before fulfilling the disposition of seal requirements in this section, the notary's estate shall, as soon as is reasonably practicable and no later than the closing of the estate, notify the Secretary in writing of the notary's death and deliver the notary's seal to the Secretary for destruction.

"Part 8. Enforcement, Sanctions, and Remedies.

"**§ 10B-35. Enforcement and penalties.**

(a) The Secretary may warn, restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.

(b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:

(1) Holding one's self out to the public as a notary if the person does not have a commission.

(2) Performing a notarial act if the person's commission has expired or been suspended.

(3) Performing a notarial act before the person had taken the oath of office.

(c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

(1) Takes an acknowledgment, performs an oath, affirmation, or jurat without the principal personally appearing before the notary;

(2) Takes a verification or proof of a subscribing witness without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity;

(d) A notary shall be guilty of a Class I felony if the notary does any of the following:

(1) Takes an acknowledgment, verification, proof, or jurat, or performs an oath or affirmation if the notary knows it is false or fraudulent.

(2) Takes an acknowledgment, or jurat without the principal appearing if the notary does so with the intent to commit fraud.

(3) Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.

(e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.

(f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.

(g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.

(h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.

(i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.

(k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting.

"Part 9. Validation of Notarial Acts.

"§ 10B-36. Acts of notaries public in certain instances validated.

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary

public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal and which contain any of the following errors are validated and given the same legal effect as if the errors had not occurred:

(1) The date of the expiration of the notary's commission is stated, whether correctly or erroneously.

(2) The notarial seal does not contain a readable impression of the notary's name, contains an incorrect spelling of the notary's name, or does not bear the name of the notary exactly as it appears on the commission, as required under G.S. 10B-24.

(3) The notary's signature does not comport exactly with the name on the notary commission or on the notary seal, as required by G.S. 10B-14.

(4) The notarial seal contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "NC", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) All notary acknowledgments performed before January 1, 1953, bearing a notarial seal are hereby validated.

(e) This section applies to notarial acts performed on or before February 1, 2004.

"**§ 10B-37. Certain notarial acts validated.**

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998.

"Article 2.

"Electronic Notary Act.

"Part 1. General Provisions.

"**§ 10B-38. Short title.**

This act is the Electronic Notary Public Act and may be cited by that name.

"**§ 10B-39. Definitions.**

The following definitions apply in this Article:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Electronic Notary Public" and "Electronic Notary" mean a notary public who has registered with the Secretary the capability of performing electronic notarial acts in conformance with this Article.

(3) "Electronic Document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic Notarial Act" and "Electronic Notarization" mean an official act by an electronic notary public that involves electronic documents.

(5) "Electronic Notary Seal" and "Electronic Seal" mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.

(6) "Electronic Signatures" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

(7) "Notary's Electronic Signature" means those forms of electronic signature which have been approved by the Secretary as authorized in G.S. 10B-49, as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

"**§ 10B-40. Scope of this Article.**

Article 1 of this Chapter applies to all acts authorized under this Article unless the provisions of Article 1 directly conflict with the provisions of this Article, in which case provisions of Article 2 shall control.

"Part 2. Registration.

"**§ 10B-41. Qualifications.**

(a) A person qualified for electronic notary registration shall meet all of the following requirements:

(1) Hold a valid commission as a notary public in the State of North Carolina.

(2) Except as otherwise provided, abide by all the provisions of Article 1 of this Chapter.

(3) Satisfy the requirements of G.S. 10B-43.

(4) Submit an electronic registration form containing no significant misstatement or omission of fact.

(5) Pay an additional nonrefundable registration fee of fifty dollars ($50.00).

(b) The Secretary may deny a registration as an electronic notary as authorized in G.S. 10B-4(d). All funds received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-58.

"**§ 10B-42. Registration with the Secretary of State.**

(a) Before performing notarial acts electronically, a notary shall register the capability to notarize electronically with the Secretary.

(b) The term of registration as an electronic notary shall coincide with the term of the notary's commission under Article 1 of this Chapter.

(c) An electronic notary shall reregister the capability to notarize electronically at the same time the notary applies for recommissioning under the requirements of Article 1 of this Chapter.

(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

(1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
(2) The state and county of commissioning of the registrant.
(3) The expiration date of the registrant's notary commission.
(4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
(5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
(6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
(7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7), which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule.

(e) The electronic registration form for an electronic notary shall be transmitted electronically to the Secretary and shall include any decrypting instructions, codes, keys, or software that allow the registration to be read.

(f) Within 10 business days after the change of any registration information required of an electronic notary, the notary shall electronically transmit to the Secretary a notice of the change of information signed with the notary's official electronic signature.

"**§ 10B-43. Course of instruction.**

(a) Before performing electronic notarial acts, a notary shall take a course of instruction of least three hours approved by the Secretary and pass an examination of this course, which shall be in addition to the educational requirements provided in Article 1 of this Chapter.

(b) The content of the course and the basis for the examination shall be notarial laws, procedures, technology, and ethics as they pertain to electronic notarization.

"**§ 10B-44. Fees for registration.**

The fee payable to the Secretary for registering or reregistering as an electronic notary is fifty dollars ($50.00), which shall be in addition to the fee required in G.S. 10B-12. All funds received by the Secretary under this section shall be deposited into the Notary Public Special Fund and used for the purposes authorized under G.S. 10B-58.

"Part 3. Electronic Notarial Acts, Powers, and Limitations.

"**§ 10B-45. Types of electronic notarial acts.**

The following types of notarial acts may be performed electronically:

(1) Acknowledgments;

(2) Jurats;
(3) Verifications or proofs; and
(4) Oaths or affirmations.

"**§ 10B-46. Prohibitions.**

An electronic notarization shall not be performed if the signer of the electronic document:

(1) Is not in the presence of the electronic notary at the time of notarization; and
(2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
(3) For any reason set forth in G.S. 10B-14.

"**§ 10B-47. Notarial components of electronic document.**

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached:

(1) The notary's name, state, and county of commissioning exactly as stated on the commission issued by the Secretary;
(2) The words "Electronic Notary Public";
(3) The words "State of North Carolina";
(4) The expiration date of the commission;
(5) The notary's electronic signature; and
(6) The completed wording of one of the following notarial certificates:
a. Acknowledgment;
b. Jurat;
c. Verification or proof; or
d. Oath or affirmation.

"**§ 10B-48. Maximum fees.**

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

(1) For acknowledgments, $10.00 per signature.
(2) For jurats, $10.00 per signature.
(3) For verifications or proofs, $10.00 per signature.
(4) For oaths or affirmations, $10.00 per signature.

"Part 4. Electronic Notary Records; Maintenance, and Disposition.

"**§ 10B-49. Electronic signature, electronic seal.**

(a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

(b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary.

"**§ 10B-50. Security measures.**

(a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.

(b) When not in use, the notary shall keep the notary's electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary, and shall not allow them to be used by any other notary or any other person.

(c) A notary shall do the following within 10 days of discovering that the notary's electronic seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) The Secretary may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.

(e) The Secretary may require an electronic notary to create and to maintain a record, journal, or entry of each electronic notarial act. The rule-making authority contained in this subsection shall become effective 18 months after the effective date of this act.

(f) The failure of an electronic notary to produce within 10 days of the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary under the provision of this Chapter until the Secretary reinstates the notary's commission.

(g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to the Secretary.

"**§ 10B-51. Maintenance of electronic device.**

(a) An electronic notary shall take reasonable steps to ensure that any registered device used to create the notary's electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

(b) If the registration of the device used to create electronic signatures either expires or is changed during the electronic notary's term of office, the notary shall cease performing electronic notarizations until:

(1) A new device is duly issued or registered to the notary; and

(2) An electronically signed notice is sent to the Secretary that shall include the starting and expiration dates of any new registration term and any other new information at variance with information in the most recently executed electronic registration form.

"**§ 10B-52. Disposition of records.**

(a) Upon compliance with G.S. 10B-51 and except as provided in subsection (b) of this section, when an electronic notary's commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary's duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software,

file, or program that enables electronic affixation of the notary's official electronic signature.

(b) A former electronic notary whose previous commission or application was not revoked or denied by the Secretary need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature within three months after commission expiration.

"Part 5. Certificate Forms.

"**§ 10B-53. Validity of notarial certificates.**

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article.

"**§ 10B-54. Form of evidence of authority of electronic notarial act.**

Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States.

"**§ 10B-55. Certificate of authority for electronic notarial act.**

(a) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary of this State shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, _____ (name, title, jurisdiction of commissioning official) certify that _____ (name of electronic notary), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of North Carolina and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this _____ day of _____, 20___.

(Electronic signature (and seal) of commissioning official)

(b) The Secretary may charge ten dollars ($10.00) for issuing an electronic certificate of authority.

"Part 6. Enforcement.

"**§ 10B-56. Restriction or revocation of registration.**

The Secretary or the Secretary's designee shall have the authority to warn, restrict, suspend, or revoke an electronic notary registration for a violation of this Chapter and on any ground for which electronic notary registration may be denied under this Chapter.

"**§ 10B-57. Wrongful manufacture, distribution, or possession of software or hardware.**

(a) Any person who knowingly creates, manufactures, or distributes software for the purpose of allowing a person to act as an electronic notary without being commissioned and registered in accordance with this act shall be guilty of a Class G felony.

(b) Any person who wrongfully obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, file, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a Class I felony.

"Article 3.

"Notary Public Special Fund.

"**§ 10B-58. Notary Public Special Fund; established.**

There is established the Notary Public Special Fund in the Secretary of State's Office. The Secretary shall hold the Fund separate and apart from all other moneys, funds, and accounts. Investment earnings credited to the assets of the Fund shall become part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall be carried-forward in the Fund for the next succeeding fiscal year. Moneys from the Fund are appropriated annually and shall be used for the administration of this Chapter."

SECTION 5. G.S. 66-271 reads as rewritten:

"**§ 66-271. Definitions.**

The following definitions apply in this Article:

...

(5) Notary public. – Defined in ~~G.S. 10A-3.~~G.S. 10B-3.

...."

SECTION 6. G.S. 66-272 reads as rewritten:

"**§ 66-272. Certificate of authentication.**

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication ~~may be placed on the document itself, if space is available, or by appending it~~ shall be appended to the document on a separate sheet."

SECTION 7. G.S. 66-273 reads as rewritten:

"**§ 66-273. Prerequisites for authentication.**

All of the following conditions must be met before a document can be authenticated:

(1) All seals and signatures must be originals.

(2) All dates must follow in chronological order on all certifications.

(3) All acknowledgments to be authenticated by the Secretary shall be in ~~English or accompanied by a certified or notarized English translation.~~ English and must comply with Chapter 10B of the General Statutes.

(4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

(5) Whenever a document is to be authenticated by the United States Department of State, it must comply with all applicable statutes, rules, and regulations of that office."

SECTION 8. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(12) Notarial Acts. – For taking an acknowledgment, oath, or affirmation or performing any other notarial act the maximum fee set in ~~G.S. 10A-10.~~ G.S. 10B-20 or G.S. 10B-48 for electronic notarial acts. This fee shall not be charged if the act is performed as a part of one of the services for which a fee is provided by this subsection; except that this fee shall be charged in addition to the fees for registering, filing, or recording instruments or plats as provided by subdivisions (1) and (3) of this subsection.

....

(17) Qualification of Notary Public. – For administering the oaths of office to a notary public and making the appropriate record entries as provided in ~~G.S. 10A-8~~ G.S. 10B-9 ten dollars ($10.00).

..."

SECTION 9. Article 3 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"**§ 47-37.1. Other forms of proof.**

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B (G.S. 10B-25 et. seq.) shall be deemed a sufficient form of probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative capacity, the acknowledgment or proof of that individual's signature may, but is not required to, (i) state that the individual signed the instrument in a representative capacity, (ii) state that the individual who signed the instrument in a representative capacity had due authority to do so, and/or (iii) identify the represented person or entity."

SECTION 10. Of the funds appropriated to the Department of the Secretary, the Secretary of State is authorized to utilize the Department of the Secretary of State's

Information Technology staff and to expend up to $200,000 from the Department of the Secretary of State E-Commerce Transaction Fund for the implementation of this act.

SECTION 11. As soon as practicable, or within 24 months of the effective date of this act, all North Carolina registers of deeds and clerks of superior court shall submit to the Department of the Secretary of State legible and reproducible copies of the pages contained in their "Records of Notaries Public" created prior to 1991 for archiving in permanent storage. The copies shall be reproduced pursuant to standards set by the Department to ensure the legibility of the copies and the compatibility with the Department's existing systems. The Department shall be responsible for any expense incurred relating to the shipment or transfer of these records. The original permanent records shall be returned to the Register of Deeds if submitted to the Secretary for copying.

SECTION 12. Sections 1, 2, 10 and 12 of this act are effective when they become law. The remainder of the act becomes effective December 1, 2005, and applies to notarial acts and applications for notary commissions and recommissions made on or after that date. Notary commissions issued under Chapter 10A of the General Statutes prior to December 1, 2005, shall remain valid unless otherwise revoked or suspended by the Secretary until those commissions expire as provided in Chapter 10A. G.S. 10B-37 and G.S. 10B-59 apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or Chapter 10B of the General Statutes.

VISITOR REGISTRATION SHEET

JUDICIARY IV — August 23, 2005

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rodney Maddox	SOSNC
Rich Bowlin	Attorney / EDL
Haley Montgomery	SOS NC
Elaine F. Marshall	SOS
P. Bly Hall	General Statutes Commission
Paul Stock	NCBA
Roger Bone	Bone & Assoc
David Clinton	EDL
Reg Smith	NCACC
Andrew Wine	AJ Register of Deeds Assn
Chip Kelly	Nelson Mullins

HOUSE COMMITTEE ON
JUDICIARY IV
2006 Session

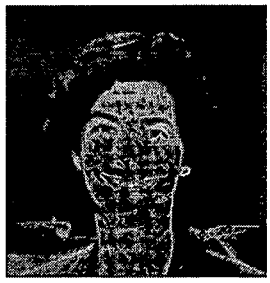
REPRESENTATIVE JENNIFER WEISS, CHAIR

Representatives Rick Glazier and Joe Kiser
Vice Chairs

Susan Doty, Committee Clerk

NORTH CAROLINA GENERAL ASSEMBLY

JUDICIARY IV
2005 – 2006 SESSION



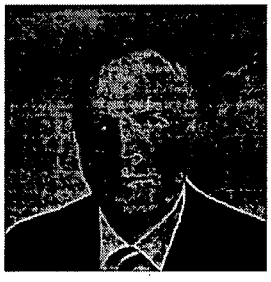
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Rep. Rick Glazier
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Rep. Joe Kiser
Vice chair



Rep. Leo Daughtry



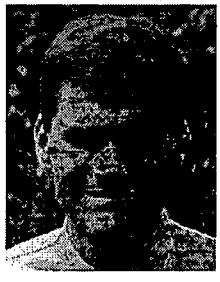
Rep. Beverly Earle



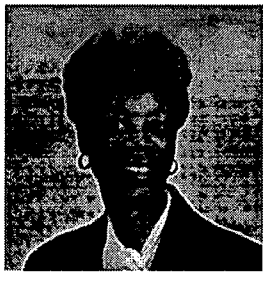
Rep. Bryan Holloway



Rep. Carolyn Justus



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Rep. Karen Ray



Rep. Timothy Spear



Rep. Cunningham
Ex-officio



Rep. Eddins
Ex-officio



Rep. Hackney
Ex-officio

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KISER, JOE V-CHAIR	Marilyn Holder	733-5782	1326	40
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HOLLOWAY, BRYAN	Dan Amburn	733-5609	1409	98
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MARTIN, GRIER	Mary Ann Norwood	733-5758	2123	95
PARMON, EARLINE	Pat Christmas	733-5829	632	66
RAY, KAREN	Linda Neal	733-5741	1025	75
SPEAR, TIMOTHY	Lona Hallissy	715-3029	403	36

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EDDINS, RICK	Susan Phillips	733-5828	1002	26
HACKNEY, JOE	Emily R. Freeman	733-5752	2207	69

ATTENDANCE

JUDICIARY IV

(Name of Committee)

DATES 2006 SESSION	5/23	5/30	6/1	6/6	6/8	6/13	6/15	6/20	6/27	6/29	7/6	7/11	7/12	7/18	
WEISS, Jennifer CHAIR	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	
GLAZIER, Rick V-CHAIR	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	
KISER, Joe V-CHAIR	✓			✓	✓				✓	✓	✓	✓	✓	✓	
DAUGHTRY, Leo			✓		✓			✓							
EARLE, Beverly															
HOLLOWAY, Bryan	✓		✓		✓				✓		✓		✓	✓	
JUSTUS, Carolyn	✓	✓	✓	✓	✓			✓	✓	✓		✓		✓	
MARTIN, Grier	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	
PARMON, Earline		✓		✓	✓			✓	✓		✓	✓	✓	✓	
RAY, Karen		✓	✓	✓	✓			✓		✓					
SPEAR, Timothy	✓	✓	✓	✓	✓			✓	✓	✓	✓	✓	✓	✓	
						Meeting cancelled - Budget Recess	Meeting cancelled								
Ex-Officio:															
Cunningham, Pete								✓		✓					
Eddins, Rick															
Hackney, Joe															

Bill	Introducer	Short Title		Latest Action	In Date	Out Date
		CONTRACT LAWS.		Judiciary IV		
H1871	Goforth	SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK.	*H	Ref To Com On Judiciary I	05-11-06	06-07-06
H1896	Goforth	PROTECT CHILDREN/SEX OFFENDER LAW CHANGES.	*H	Pres. To Gov. 7/28/2006	05-11-06	06-12-06
H1902	Ray	GPS MONITORING OF SOME SEX OFFENDERS/ FUNDS.	*H	Re-ref Com On Appropriations	05-11-06	06-07-06
$ H1903	**Ray**	**INCREASE PROTECTION FROM SEX OFFENDERS/ FUNDS.**	**H**	**Re-ref Com On Appropriations**	**05-11-06**	**05-31-06**
H1904	Ray	SEX OFFENDER/CAN NOT GO ONTO SCHOOL GDS.	H	Ref To Com On Judiciary IV	05-11-06	
$ H1921	**Howard**	**JESSICA LUNSFORD ACT FOR NC.**	**H**	**Ref to the Com on Judiciary IV and, if favorable, to the Com on Appropriations**	**05-15-06**	
H2041	Dickson	CIVILIAN TRAFFIC INVESTIGATORS.	*HR	Ch. SL 2006-100	06-20-06	06-28-06
H2060	Haire	VICTIMS' COMPENSATION CHANGES.	*HR	Ch. SL 2006-183	05-18-06	06-20-06
H2195=	Cunningham	LIABILITY PROTECTION FOR STATE MED ASST. TEAMS.	*HR	Ch. SL 2006-81	05-24-06	06-07-06
H2200=	Cunningham	ENHANCE EMBARGO AUTH/ PROTECT FOOD SUPPLY.	*HR	Ch. SL 2006-80	05-24-06	06-20-06
H2880	Folwell	NO PRAYER FOR JUDGMENT/BUS STOP ARM VIOLATION.	*HR	Ch. SL 2006-160	06-19-06	06-28-06
041=	A. B Swindell	CRIMINAL RECORDS CHECKS/LTC CHANGES.	*HR	Ch. SL 2005-4	03-01-05	03-07-05
S0061	Scott Thomas	FELONY DEATH BY VEHICLE/SEX OFFENDER AMEND.	*H	Ref to Judiciary I. If fav, re-ref to Appropriations/ Base Budget	05-26-05	07-28-05
S0189	William R. Purce	ALL-TERRAIN VEHICLE REGULATION.	*HR	Ch. SL 2005-282	07-13-05	07-20-05
S0472	Scott Thomas	CHILD EXPLOITATION PREVENTION ACT.	*HR	Ch. SL 2005-121	04-11-05	05-03-05
S0492	Kay R. Hagan	JURY EXHIBITS.	*H	Re-ref Com On Judiciary III	04-20-05	05-09-05
S0527	Daniel G. Clodfe	CAMPUS POLICE ACT.	*HR	Ch. SL 2005-231	06-02-05	06-07-05
S0533	Philip E. Berger	CHILD'S ALLOWANCE FROM ESTATE.	*HR	Ch. SL 2005-225	04-04-05	07-12-05
S0666=	Fletcher L. Hart	PLANNED COMMUNITY ACT AMENDMENT.	*HR	Ch. SL 2005-214	04-21-05	06-30-05
S0667=	Fletcher L. Hart	SUBORDINATION AGREEMENT/REGISTRA. AMENDMENTS.	HR	Ch. SL 2005-212	04-21-05	06-30-05
S0671=	Fletcher L. Hart	REAL PROP. ELECTRONIC RECORDING/NOTARY ACT.	*HR	Ch. SL 2005-391	05-10-05	08-22-05
$ S0686	**Walter H. Dalton**	**METH. LAB PREVENTION ACT.**	***H**	**Pres. To Gov. 7/20/2006**	**05-03-05**	**07-25-05**

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
S0737=	Tony Rand	COUNTY GOV'T. CRIMINAL RECORDS CHECKS.	*HR	Ch. SL 2005-358	04-21-05	08-11-05
S1124=	Charles W. Alber	BREACH CONFID. FILES/ SCHOOL BD. EMPLOYEES.	*HR	Ch. SL 2005-321	07-27-05	08-04-05
S1216	Julia Boseman	DSS DISCLOSURE OF INFORMATION/ABUSE/ NEGLECT.	*H	Pres. To Gov. 7/ 26/2006	06-22-06	06-29-06
S1289=	Stan Bingham	CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED.	*HR	Ch. SL 2006-177	06-26-06	06-29-06
S1289=	Stan Bingham	CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED.	*HR	Ch. SL 2006-177	06-30-06	07-06-06
S1442	Walter H. Dalton	RUTHERFORD SUBDIV REPEAL/RED LT CAMERA STUDY.	*H	Pres. To Gov. 7/ 19/2006	06-28-06	07-12-06

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H0048	Miller	STOLEN REGISTRATION PLATES REPLACED - NO FEE.	H	Ref To Com On Judiciary IV	02-03-05	
H0076	Holliman	BAN SMOKING IN RESTAURANTS.	*HF	Failed 2nd Reading	02-07-05	05-12-05
H0176	Clary	CRIMINAL RECORDS CHECKS/LTC CHANGES.	H	Ref To Com On Judiciary IV	02-10-05	
H0277	Glazier	ESTABLISH CHILD ASSESSMENT RESPONSES.	*HR	Ch. SL 2005-55	02-17-05	03-30-05
H0347	Glazier	AG DEVELOPMENT/ FARMLAND PRESERVATION	*H	Ref To Com On Agriculture/ Environment/ Natural Resources	02-23-05	05-24-05
H0448	Glazier	COMMUNITY COLLEGES EXEMPT FROM SMOKING LAWS.	*HR	Ch. SL 2006-133	03-16-05	05-12-05
H0451	Glazier	ADOPTIVE FAMILIES/ DHHS/CRIM. CHECKS.	*HR	Ch. SL 2005-114	03-03-05	04-04-05
H0634	Tolson	JUDICIAL DEPT. CRIMINAL BACKGROUND CHECKS.-AB	*H	Re-ref Com On Finance	03-15-05	03-28-05
H0650	Haire	BUSINESS COURT CASES/ FEE.	*HR	Ch. SL 2005-425	03-16-05	03-28-05
H0661	Glazier	RESP. INDIVIDUALS LIST/EXPUNCTION PROCESS.	*HR	Ch. SL 2005-399	03-16-05	05-25-05
H0687	Gibson	PIRATING MOVIES.	*HR	Ch. SL 2005-301	03-17-05	05-02-05
H0723	Glazier	UNC/CRIMINAL RECORD CHECKS/FEE.-AB	*H	Re-ref Com On Finance	03-17-05	05-26-05
H0762=	Culpepper	REAL PROPERTY ELECTRONIC RECORDING.	H	Ref To Com On Judiciary IV	03-17-05	
H0764=	Culpepper	SUBORDINATION AGREEMENT/REGISTRA. AMENDMENTS.	H	Ref To Com On Judiciary IV	03-17-05	
H0765	Culpepper	PLANNED COMMUNITY ACT AMENDMENT.	H	Ref To Com On Judiciary IV	03-17-05	
H0801	Glazier	CHILD CUSTODY/ GUARDIANSHIP JURISDICTION.	*HR	Ch. SL 2005-320	03-21-05	04-13-05
H0821	Glazier	EVIDENCE/SPEED-MEASURING INSTRUMENTS.	HR	Ch. SL 2005-137	03-21-05	03-31-05
H0822	Glazier	BLAKELY DECISION/ CONFORM STATE LAW.	*HR	Ch. SL 2005-145	03-21-05	04-06-05
H0877	Justus	FORECLOSURE NOTICE OF SALE/DISP. OF PROCEEDS.	*H	Ref To Com On Judiciary II	03-24-05	05-26-05
H0878	Justus	CONFERENCE OF CLERKS OF SUPERIOR COURT.	*HR	Ch. SL 2005-100	03-24-05	04-13-05
H0917=	Justus	AUTHORIZE JUDGE/ CONCEALED WEAPON IN CTHS.	H	Re-ref Com On Judiciary III	03-28-05	05-24-05
H0991	Starnes	BAN UNDERAGE DRINKING.	H	Ref To Com On Judiciary IV	03-30-05	
H1133	Dickson	DESIGNATE GENERAL ASSEMBLY BUILDINGS NONSMOKING.	*HR	Ch. SL 2006-76	04-06-05	05-02-05

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Bill	Introducer	Short Title		Latest Action	In Date	Out Date
H1176	Weiss	PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.	*HR	Ch. SL 2005-401	04-12-05	05-02-05
H1176	Weiss	PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.	*HR	Ch. SL 2005-401	05-05-05	05-11-05
H1176	Weiss	PROPERTY EXEMPT FROM ENFORCEMENT ACTIONS.	*HR	Ch. SL 2005-401	05-18-05	05-25-05
H1182	Culp	AMEND UCCJEA TO DEFINE DE FACTO CUSTODIAN.	H	Ref To Com On Judiciary IV	04-12-05	
H1231	Steen	PROHIBIT EXTREME PRICING PRACTICES.	*H	Pres. To Gov. 7/20/2006	07-12-06	07-18-06
H1240	Culpepper	VACATION RENTAL ACT AMENDMENTS.	*HR	Ch. SL 2005-292	04-18-05	04-20-05
H1262	Weiss	AUTH. SOCIAL WORK BD. TO EMPLOY PERSONNEL.	HR	Ch. SL 2005-129	04-18-05	04-26-05
H1271	Culpepper	AMEND AUCTIONEER LICENSING LAWS.	*HR	Ch. SL 2005-330	04-19-05	05-05-05
H1323=	Glazier	ESTABLISH NC INNOCENCE INQUIRY COMMISSION.	*H	Pres. To Gov. 7/27/2006	04-20-05	08-09-05
$ H1345	**Haire**	**LIMIT CERTAIN SELF-SERVICE DRUG PURCHASES.**	**H**	**Re-ref Com On Judiciary IV**	**06-22-05**	
$ H1367	**Hilton**	**WAIVE MARR. LIC. FEE/ PRE. COUNSELING/FUNDS.**	**H**	**Ref to the Com on Judiciary IV and, if favorable, to the Com on Appropriations**	**04-21-05**	
H1373	Culpepper	JUDICIAL APPOINTMENT/ VOTER RETENTION.	H	Ref To Com On Judiciary IV	04-21-05	
H1375	Culpepper	CHILD SUPPORT REFORMS.	*HR	Ch. SL 2005-389	04-21-05	05-04-05
H1392	Glazier	FAILURE TO RETURN HIRED MOTOR VEHICLES.	*HR	Ch. SL 2005-182	04-21-05	05-19-05
H1434	Glazier	SIGNATURE CONFIRMATION UNDER RULE 4.	*HR	Ch. SL 2005-221	04-21-05	05-04-05
H1472	Kiser	RESENTENCE AFTER APPELLATE REVIEW.	H	Ref To Com On Judiciary IV	04-21-05	
H1484	Culpepper	DWI AFTER CONVICTION OF DWI WITH A DEATH.	H	Ref To Com On Judiciary IV	04-21-05	
H1485	Culpepper	SEARCH WARRANTS/AUDIO & VIDEO TRANSMISSION.	HR	Ch. SL 2005-334	04-21-05	05-05-05
H1486	Culpepper	FELONY DEATH BY VEHICLE.	*H	Re-ref Com On Appropriations	04-21-05	05-10-05
H1503	Martin	REGIONAL PUBLIC TRANSPORTATION LIABILITY.	*HR	Ch. SL 2005-160	04-21-05	05-04-05
H1504	Martin	LAW ENFORCEMENT OFFICER DISCIPLINE.	H	Ref To Com On Judiciary IV	04-21-05	
H1514	Ray	RECKLESS ENDANGERMENT.	H	Re-ref Com On Judiciary IV	04-21-05	06-13-05
H1514	Ray	RECKLESS ENDANGERMENT.	H	Re-ref Com On Judiciary IV	07-07-05	
H1543	Ray	AUTOPSY PHOTOS NOT PUBLIC RECORD.	*HR	Ch. SL 2005-393	04-21-05	05-31-05
H1547	Parmon	AMEND PUBLIC BUILDING	H	Ref To Com On	04-21-05	

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MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 23, 2006

The House Committee on Judiciary IV met on Tuesday, May 23, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bryan Holloway, Carolyn Justus, Grier Martin, and Tim Spear and staff attorneys Trina Griffin, and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

As this was the first meeting of the Judiciary IV Committee of the 2006 Session, Representative Weiss asked all committee members to introduce themselves. She welcomed Representative Tim Spear to the Committee. Representative Spear was appointed to take the place of Representative Culpepper, who resigned from the House of Representatives to take a position with the Utilities Commission.

Because several of the bills scheduled to be heard by the committee this session deal with sex offenders, Representative Weiss said that, instead of hearing bills at this meeting, she has asked Susan Sitze, NCGA Staff Attorney, to explain the statutes relating to sex offenders. This included statutes relating to adult and juvenile offenders, definitions, and registration requirements for sex offenders. Copies of the hand-outs provided by Ms. Sitze are attached.

There being no further business, the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda; Copy of Sex Offender Statutes and related material; Visitor Registration, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 23, 2006
Room 415 LOB
10:00 AM

no bills heard at this meeting.

OPENING REMARKS
Representative Jennifer Weiss, Chairman
Introductions

AGENDA ITEMS:

HB 1902 - GPS MONITORING OF SOME SEX OFFENDERS/FUNDS.
Representative Karen Ray

HB 1903 - INCREASE PROTECTION FROM SEX OFFENDERS/ FUNDS.
Representative Karen Ray

HB 1871 - SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK.
Representative Bruce Goforth

ADJOURNMENT

Statutes for Offenses Requiring Sex Offender Registration

§ 14-39. Kidnapping.

(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

(1) Holding such other person for a ransom or as a hostage or using such other person as a shield; or

(2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or

(3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person; or

(4) Holding such other person in involuntary servitude in violation of G.S. 14-43.2.

(b) There shall be two degrees of kidnapping as defined by subsection (a). If the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted, the offense is kidnapping in the first degree and is punishable as a Class C felony. If the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony.

(c) Any firm or corporation convicted of kidnapping shall be punished by a fine of not less than five thousand dollars ($5,000) nor more than one hundred thousand dollars ($100,000), and its charter and right to do business in the State of North Carolina shall be forfeited.

(1933, c. 542; 1975, c. 843, s. 1; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1983, c. 746, s. 2; 1993, c. 539, s. 1143; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 509, s. 8.)

§ 14-41. Abduction of children.

(a) Any person who, without legal justification or defense, abducts or induces any minor child who is at least four years younger than the person to leave any person, agency, or institution lawfully entitled to the child's custody, placement, or care shall be guilty of a Class F felony.

(b) The provisions of this section shall not apply to any public officer or employee in the performance of his or her duty.

(1879, c. 81; Code, s. 973; Rev., s. 3358; C.S., s. 4223; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1144; 1994, Ex. Sess., c. 24, s. 14(c); 1995 (Reg. Sess., 1996), c. 745, s. 1.)

§ 14-43.3. Felonious restraint.

A person commits the offense of felonious restraint if he unlawfully restrains another person without that person's consent, or the consent of the person's parent or legal custodian if the person is less than 16 years old, and moves the person from the place of the initial restraint by transporting him in a motor vehicle or other conveyance. Violation of this section is a Class F felony. Felonious restraint is considered a lesser included offense of kidnapping.

(1985, c. 545, s. 1; 1993, c. 539, s. 1147; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 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.

(1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175, ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2; 2004-128, s. 7.)

§ 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.

(1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 5; 1981, cc. 63, 179; 1993, c. 539, s. 1130; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(b); 2004-128, s. 8.)

§ 14-27.4. First-degree sexual offense.

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

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

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

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

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

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

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

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

§ 14-27.5. 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.

(1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 7; 1981, c. 63; c. 179, s. 14; 1993, c. 539, s. 1131; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(c).)

§ 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. (2003-252, s. 2.)

§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private,

charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools.

(1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 9; 1981, c. 63; c. 179, s. 14; 1993, c. 539, s. 1132; 1994, Ex. Sess., c. 24, s. 14(c); 1999-300, s. 2; 2003-98, s. 1.)

§ 14-178. Incest.

(a) Offense. - A person commits the offense of incest if the person engages in carnal intercourse with the person's (i) grandparent or grandchild, (ii) parent or child or stepchild or legally adopted child, (iii) brother or sister of the half or whole blood, or (iv) uncle, aunt, nephew, or niece.

(b) Punishment and Sentencing. -

(1) A person is guilty of a Class B1 felony if either of the following occurs:

a. The person commits incest against a child under the age of 13 and the person is at least 12 years old and is at least four years older than the child when the incest occurred.

b. The person commits incest against a child who is 13, 14, or 15 years old and the person is at least six years older than the child when the incest occurred.

(2) A person is guilty of a Class C felony if the person commits incest against a child who is 13, 14, or 15 and the person is more than four but less than six years older than the child when the incest occurred.

(3) In all other cases of incest, the parties are guilty of a Class F felony.

(c) No Liability for Children Under 16. - No child under the age of 16 is liable under this section if the other person is at least four years older when the incest occurred.

(1879, c. 16, s. 1; Code, s. 1060; Rev., s. 3351; 1911, c. 16; C.S., s. 4337; 1965, c. 132; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1993, c. 539, s. 1192; 1994, Ex. Sess., c. 24, s. 14(c); 2002-119, s. 1.)

§ 14-190.6. Employing or permitting minor to assist in offense under Article.

Every person 18 years of age or older who intentionally, in any manner, hires, employs, uses or permits any minor under the age of 16 years to do or assist in doing any act or thing constituting an offense under this Article and involving any material, act or thing he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1, shall be guilty of a Class I felony.

(1971, c. 405, s. 1; 1983, c. 916, s. 2; 1985, c. 703, s. 6.)

§ 14-190.9. Indecent exposure.

(a) Unless the conduct is punishable under subsection (a1) of this section, any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(a1) Unless the conduct is prohibited by another law providing greater punishment, any person at least 18 years of age who shall willfully expose the private parts of his or her person in any public place in the presence of any other person less than 16 years of age for the purpose of arousing or gratifying sexual desire shall be guilty of a Class H felony. An offense committed under this subsection shall not be considered to be a lesser included offense under G.S. 14-202.1.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech. (1971, c. 591, s. 1; 1993, c. 301, s. 1; c. 539, s. 124; 1994, Ex. Sess., c. 24, s. 14(c); 1998-46, s. 3; 2005-226, s. 1.)

§ 14-190.16. First degree sexual exploitation of a minor.

(a) Offense. - A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

(b) Inference. - In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. - Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. - Violation of this section is a Class D felony.

(1985, c. 703, s. 9; 1993, c. 539, s. 1196; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 19.5(o).)

§ 14-190.17. Second degree sexual exploitation of a minor.

(a) Offense. - A person commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:

(1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or

(2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.

(b) Inference. - In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. - Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. - Violation of this section is a Class F felony.

(1985, c. 703, s. 9; 1993, c. 539, s. 1197; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.17A. Third degree sexual exploitation of a minor.

(a) Offense. - A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.

(b) Inference. - In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. - Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. - Violation of this section is a Class I felony.

(1989 (Reg. Sess., 1990), c. 1022, s. 1; 1993, c. 539, s. 1198; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-190.18. Promoting prostitution of a minor.

(a) Offense. - A person commits the offense of promoting prostitution of a minor if he knowingly:

(1) Entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or

(2) Supervises, supports, advises, or protects the prostitution of or by a minor.

(b) Mistake of Age. - Mistake of age is not a defense to a prosecution under this section.

(c) Punishment and Sentencing. - Violation of this section is a Class D felony.

(1985, c. 703, s. 9; 1993, c. 539, s. 1199; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 507, s. 19.5(p).)

§ 14-190.19. Participating in prostitution of a minor.

(a) Offense. - A person commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, "patronizing a minor prostitute" means:

(1) Soliciting or requesting a minor to participate in prostitution;

(2) Paying or agreeing to pay a minor, either directly or through the minor's agent, to participate in prostitution; or

(3) Paying a minor, or the minor's agent, for having participated in prostitution, pursuant to a prior agreement.

(b) Mistake of Age. - Mistake of age is not a defense to a prosecution under this section.

(c) Punishment and Sentencing. - Violation of this section is a Class F felony.

(1985, c. 703, s. 9; 1993, c. 539, s. 1200; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 14-202.1. Taking indecent liberties with children.

(a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

(b) Taking indecent liberties with children is punishable as a Class F felony.

(1955, c. 764; 1975, c. 779; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; 179, s. 14; 1993, c. 539, s. 1201; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 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), (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.

(1923, c. 78; C.S., s. 4356(a); 1957, c. 338; 1993, c. 539, s. 131; 1994, Ex. Sess., c. 24, s. 14(c); 2003-303, s. 1; 2004-109, s. 7.)

§ 14-202.3. Solicitation of child by computer to commit an unlawful sex act.

(a) Offense. – A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section.

(b) Jurisdiction. – The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State.

(c) Punishment. – A violation of this section is a Class H felony. (1995 (Reg. Sess., 1996), c. 632, s. 1; 2005-121, s. 1.)

ARTICLE 27A.
Sex Offender and Public Protection Registration Programs.

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Part 1. Registration Programs, Purpose and Definitions Generally.

§ 14-208.5. Purpose.

The General Assembly recognizes that sex offenders often pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is of paramount governmental interest.

The General Assembly also recognizes that persons who commit certain other types of offenses against minors, such as kidnapping, pose significant and unacceptable threats to the public safety and welfare of the children in this State and that the protection of those children is of great governmental interest. Further, the General Assembly recognizes that law enforcement officers' efforts to protect communities, conduct investigations, and quickly apprehend offenders who commit sex offenses or certain offenses against minors are impaired by the lack of information available to law enforcement agencies about convicted offenders who live within the agency's jurisdiction. Release of information about these offenders will further the governmental interests of public safety so long as the information released is rationally related to the furtherance of those goals.

Therefore, it is the purpose of this Article to assist law enforcement agencies' efforts to protect communities by requiring persons who are convicted of sex offenses or of certain other offenses committed against minors to register with law enforcement agencies, to require the exchange of relevant information about those offenders among law enforcement agencies, and to authorize the access to necessary and relevant information about those offenders to others as provided in this Article.

(1995, c. 545, s. 1; 1997-516, s. 1.)

§ 14-208.6. Definitions.

The following definitions apply in this Article:

(1a) "Aggravated offense" means any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

(1b) "County registry" means the information compiled by the sheriff of a county in compliance with this Article.

(1c) "Division" means the Division of Criminal Statistics of the Department of Justice.

(1d) "Employed" includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(1e) "Institution of higher education" means any postsecondary public or private educational institution, including any trade or professional institution, college, or university.

(1f) "Mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of others.

(1g) "Nonresident student" means a person who is not a resident of North Carolina but who is enrolled in any type of school in the State on a part-time or full-time basis.

(1h) "Nonresident worker" means a person who is not a resident of North Carolina but who has employment or carries on a vocation in the State, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 14 days, or for an aggregate period exceeding 30 days in a calendar year.

(1i) "Offense against a minor" means any of the following offenses if the offense is committed against a minor, and the person committing the offense is not the minor's parent: G.S. 14-39 (kidnapping), G.S. 14-41 (abduction of children), and G.S. 14-43.3 (felonious restraint). The term also includes the following if the person convicted of the following is not the minor's parent: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(2) "Penal institution" means:

a. A detention facility operated under the jurisdiction of the Division of Prisons of the Department of Correction;

b. A detention facility operated under the jurisdiction of another state or the federal government; or

c. A detention facility operated by a local government in this State or another state.

(2a) "Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has an onset in adolescence or early adulthood, is stable over time, and leads to distress or impairment.

(2b) "Recidivist" means a person who has a prior conviction for an offense that is described in G.S. 14-208.6(4).

(3) "Release" means discharged or paroled.

(4) "Reportable conviction" means:

a. A final conviction for an offense against a minor, a sexually violent offense, or an attempt to commit any of those offenses unless the conviction is for aiding and abetting. A final conviction for aiding and abetting is a reportable conviction only if the court sentencing the individual finds that the registration of that individual under this Article furthers the purposes of this Article as stated in G.S. 14-208.5.

b. A final conviction in another state of an offense, which if committed in this State, 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), (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.

(5) "Sexually violent offense" means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), or G.S. 14-202.1 (taking indecent liberties with children). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses.

(6) "Sexually violent predator" means a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(7) "Sheriff" means the sheriff of a county in this State.

(8) "Statewide registry" means the central registry compiled by the Division in accordance with G.S. 14-208.14.

(9) "Student" means a person who is enrolled on a full-time or part-time basis, in any postsecondary public or private educational institution, including any trade or professional institution, or other institution of higher education.

(1995, c. 545, s. 1; 1997-15, ss. 1, 2; 1997-516, s. 1; 1999-363, s. 1; 2001-373, s. 1; 2002-147, s. 16; 2003-303, s. 2; 2004-109, s. 8.)

§ 14-208.6A. Lifetime registration requirements for criminal offenders.

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record.

(1997-516, s. 1; 2001-373, s. 2.)

§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall

register in accordance with this Article just as an adult convicted of the same offense must register.

(1997-516, s. 1; 1998-202, s. 13(e).)

§ 14-208.6C. Discontinuation of registration requirement.

The period of registration required by any of the provisions of this Article shall be discontinued only if the conviction requiring registration is reversed, vacated, or set aside, or if the registrant has been granted an unconditional pardon of innocence for the offense requiring registration.

(2001-373, s. 3.)

Part 2. Sex Offender and Public Protection Registration Program.

§ 14-208.7. Registration.

(a) A person who is a State resident and who has a reportable conviction shall be required to maintain registration with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person shall register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. If the person is a current resident of North Carolina, the person shall register:

(1) Within 10 days of release from a penal institution or arrival in a county to live outside a penal institution; or

(2) Immediately upon conviction for a reportable offense where an active term of imprisonment was not imposed.

Registration shall be maintained for a period of 10 years following release from a penal institution. If no active term of imprisonment was imposed, registration shall be maintained for a period of 10 years following each conviction for a reportable offense.

(a1) A person who is a nonresident student or a nonresident worker and who has a reportable conviction, or is required to register in the person's state of residency, is required to maintain registration with the sheriff of the county where the person works or attends school. In addition to the information required under subsection (b) of this section, the person shall also provide information regarding the person's school or place of employment as appropriate and the person's address in his or her state of residence.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article. The registration form shall require:

(1) The person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, drivers license number, and home address;

(2) The type of offense for which the person was convicted, the date of conviction, and the sentence imposed;

(3) A current photograph;

(4) The person's fingerprints;

(5) A statement indicating whether the person is a student or expects to enroll as a student within a year of registering. If the person is a student or expects to enroll as a student within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is a student or expects to enroll as a student; and

(6) A statement indicating whether the person is employed or expects to be employed at an institution of higher education within a year of registering. If the person is employed or expects to be employed at an institution of higher education within a year of registration, then the registration form shall also require the name and address of the educational institution at which the person is or expects to be employed.

The sheriff shall photograph the individual at the time of registration and take fingerprints from the individual at the time of registration both of which will be kept as part of the registration form. The registrant will not be required to pay any fees for the photograph or fingerprints taken at the time of registration.

(c) When a person registers, the sheriff with whom the person registered shall immediately send the registration information to the Division in a manner determined by the Division. The sheriff shall retain the original registration form and other information collected and shall compile the information that is a public record under this Part into a county registry.

(1995, c. 545, s. 1; 1997-516, s. 1; 2001-373, s. 4; 2002-147, s. 17.)

§ 14-208.8. Prerelease notification.

(a) At least 10 days, but not earlier than 30 days, before a person who will be subject to registration under this Article is due to be released from a penal institution, an official of the penal institution shall:

(1) Inform the person of the person's duty to register under this Article and require the person to sign a written statement that the person was so informed or, if the person refuses to sign the statement, certify that the person was so informed;

(2) Obtain the registration information required under G.S. 14-208.7(b)(1), (2), (5), and (6), as well as the address where the person expects to reside upon the person's release; and

(3) Send the Division and the sheriff of the county in which the person expects to reside the information collected in accordance with subdivision (2) of this subsection.

(b) If a person who is subject to registration under this Article does not receive an active term of imprisonment, the court pronouncing sentence shall conduct, at the time of sentencing, the notification procedures specified in subsection (a) of this section.

(1995, c. 545, s. 1; 1997-516, s. 1; 2002-147, s. 18.)

§ 14-208.9. Change of address; change of academic status or educational employment status.

(a) If a person required to register changes address, the person shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall notify the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall provide written notice of the new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall provide written notice of the new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(1995, c. 545, s. 1; 1997-516, s. 1; 2001-373, s. 5; 2002-147, s. 19.)

§ 14-208.9A. Verification of registration information.

The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the person.

(2) The person shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(4) If the person fails to return the verification form to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the verification form is returned to the sheriff as undeliverable, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(1997-516, s. 1.)

§ 14-208.10. Registration information is public record; access to registration information.

(a) The following information regarding a person required to register under this Article is public record and shall be available for public inspection: name, sex, address, physical description, picture, conviction date, offense for which registration was required, the sentence imposed as a result of the conviction, and registration status. The

information obtained under G.S. 14-208.22 regarding a person's medical records or documentation of treatment for the person's mental abnormality or personality disorder shall not be a part of the public record.

The sheriff shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) Any person may obtain a copy of an individual's registration form, a part of the county registry, or all of the county registry, by submitting a written request for the information to the sheriff. However, the identity of the victim of an offense that requires registration under this Article shall not be released. The sheriff may charge a reasonable fee for duplicating costs and for mailing costs when appropriate.

(1995, c. 545, s. 1; 1997-516, s. 1.)

§ 14-208.11. Failure to register; falsification of verification notice; failure to return verification form; order for arrest.

(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to register.

(2) Fails to notify the last registering sheriff of a change of address.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

(a1) If a person commits a violation of subsection (a) of this section, the probation officer, parole officer, or any other law enforcement officer who is aware of the violation shall immediately arrest the person in accordance with G.S. 15A-401, or seek an order for the person's arrest in accordance with G.S. 15A-305.

(b) Before a person convicted of a violation of this Article is due to be released from a penal institution, an official of the penal institution shall conduct the prerelease notification procedures specified under G.S. 14-208.8(a)(2) and (3). If upon a conviction

for a violation of this Article, no active term of imprisonment is imposed, the court pronouncing sentence shall, at the time of sentencing, conduct the notification procedures specified under G.S. 14-208.8(a)(2) and (3).

(1995, c. 545, s. 1; 1997-516, s. 1; 2002-147, s. 20.)

§ 14-208.12A. Termination of registration requirement.

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(1997-516, s. 1.)

§ 14-208.13. File with Police Information Network.

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) The Division shall maintain the registration information permanently even after the registrant's reporting requirement expires.

(1995, c. 545, s. 1; 1997-516, s. 1.)

§ 14-208.14. Statewide registry; Division of Criminal Statistics designated custodian of statewide registry.

(a) The Division of Criminal Statistics shall compile and keep current a central statewide sex offender registry. The Division is the State agency designated as the custodian of the statewide registry. As custodian the Division has the following responsibilities:

(1) To receive from the sheriff or any other law enforcement agency or penal institution all sex offender registrations, changes of address, changes of academic or educational employment status, and prerelease notifications required under this Article or under federal law. The Division shall also receive notices of any violation of this Article, including a failure to register or a failure to report a change of address.

(2) To provide all need-to-know law enforcement agencies (local, State, campus, federal, and those located in other states) immediately upon receipt by the Division of any of the following: registration information, a prerelease notification, a change of address, a change of academic or educational employment status, or notice of a violation of this Article.

(2a) To notify the appropriate law enforcement unit at an institution of higher education as soon as possible upon receipt by the Division of relevant information based on registration information or notice of a change of academic or educational employment status. If an institution of higher education does not have a law enforcement unit, then the Division shall provide the information to the local law enforcement agency that has jurisdiction for the campus.

(3) To coordinate efforts among law enforcement agencies and penal institutions to ensure that the registration information, changes of address, prerelease notifications, and notices of failure to register or to report a change of address are conveyed in an appropriate and timely manner.

(4) To provide public access to the statewide registry in accordance with this Article.

(b) The statewide registry shall include the following:

(1) Registration information obtained by a sheriff or penal institution under this Article or from any other local or State law enforcement agency.

(2) Registration information received from a state or local law enforcement agency or penal institution in another state.

(3) Registration information received from a federal law enforcement agency or penal institution.

(1997-516, s. 1; 2002-147, s. 21.)

§ 14-208.15. Certain statewide registry information is public record: access to statewide registry.

(a) The information in the statewide registry that is public record is the same as in G.S. 14-208.10. The Division shall release any other relevant information that is necessary to protect the public concerning a specific person, but shall not release the identity of the victim of the offense that required registration under this Article.

(b) The Division shall provide free public access to automated data from the statewide registry, including photographs provided by the registering sheriffs, via the

Internet. The public will be able to access the statewide registry to view an individual registration record, a part of the statewide registry, or all of the statewide registry. The Division may also provide copies of registry information to the public upon written request and may charge a reasonable fee for duplicating costs and mailings costs.

(1997-516, s. 1.)

Part 3. Sexually Violent Predator Registration Program.

§ 14-208.20. Sexually violent predator determination; notice of intent; presentence investigation.

(a) When a person is charged by indictment or information with the commission of a sexually violent offense, the district attorney shall decide whether to seek classification of the offender as a sexually violent predator if the person is convicted. If the district attorney intends to seek the classification of a sexually violent predator, the district attorney shall within the time provided for the filing of pretrial motions under G.S. 15A-952 file a notice of the district attorney's intent. The court may for good cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make other appropriate orders.

(b) Prior to sentencing a person as a sexually violent predator, the court shall order a presentence investigation in accordance with G.S. 15A-1332(c). However, the study of the defendant and whether the defendant is a sexually violent predator shall be conducted by a board of experts selected by the Department of Correction. The board of experts shall be composed of at least four people. Two of the board members shall be experts in the field of the behavior and treatment of sexual offenders, one of whom shall be selected from a panel of experts in those fields provided by the North Carolina Medical Society and not employed with the Department of Correction or employed on a full-time basis with any other State agency. One of the board members shall be a victims' rights advocate, and one of the board members shall be a representative of law enforcement agencies.

(c) When the defendant is returned from the presentence commitment, the court shall hold a sentencing hearing in accordance with G.S. 15A-1334. At the sentencing hearing, the court shall, after taking the presentencing report under advisement, make written findings as to whether the defendant is classified as a sexually violent predator and the basis for the court's findings.

(1997-516, s. 1; 2001-373, s. 6.)

§ 14-208.21. Lifetime registration procedure; application of Part 2 of this Article.

Unless provided otherwise by this Part, the provisions of Part 2 of this Article apply to a person classified as a sexually violent predator, a person who is a recidivist, or a person who is convicted of an aggravated offense. The procedure for registering as a sexually violent predator, a recidivist, or a person convicted of an aggravated offense is the same as under Part 2 of this Article.

(1997-516, s. 1; 2001-373, s. 7.)

§ 14-208.22. Additional registration information required.

(a) In addition to the information required by G.S. 14-208.7, the following information shall also be obtained in the same manner as set out in Part 2 of this Article from a person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator:

(1) Identifying factors.

(2) Offense history.

(3) Documentation of any treatment received by the person for the person's mental abnormality or personality disorder.

(b) The Division shall provide each sheriff with forms for registering persons as required by this Article.

(c) The Department of Correction shall also obtain the additional information set out in subsection (a) of this section and shall include this information in the prerelease notice forwarded to the sheriff or other appropriate law enforcement agency.

(1997-516, s. 1; 2001-373, s. 8.)

§ 14-208.23. Length of registration.

A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person's life. Except as provided under G.S. 14-208.6C, the requirement of registration shall not be terminated.

(1997-516, s. 1; 2001-373, s. 9.)

§ 14-208.24. Verification of registration information.

(a) The information in the county registry shall be verified by the sheriff for each registrant who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator every 90 days after the person's initial registration date.

(b) The procedure for verifying the information in the criminal offender registry is the same as under G.S. 14-208.9A, except that verification shall be every 90 days as provided by subsection (a) of this section.

(1997-516, s. 1; 2001-373, s. 10.)

Part 4. Registration of Certain Juveniles Adjudicated for Committing Certain Offenses.

§ 14-208.26. Registration of certain juveniles adjudicated delinquent for committing certain offenses.

(a) When a juvenile is adjudicated delinquent for a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), or G.S. 14-27.6 (attempted rape or sexual offense), and the juvenile was at least eleven years of age at the time of the commission of the offense, the court shall consider whether the juvenile is a danger to the community. If the court finds that the juvenile is a danger to the community, then the court shall consider whether the juvenile should be required to register with the county sheriff in accordance with this Part. The determination as to whether the juvenile is a danger to the community and whether the juvenile shall be ordered to register shall be made by the presiding judge at the dispositional hearing. If the judge rules that the juvenile is a danger to the community and that the juvenile shall register, then an order shall be entered requiring the juvenile to register. The court's findings regarding whether the juvenile is a danger to the community and whether the juvenile shall register shall be entered into the court record. No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community.

A juvenile ordered to register under this Part shall register and maintain that registration as provided by this Part.

(a1) For purposes of this section, a violation of any of the offenses listed in subsection (a) of this section includes all of the following: (i) the commission of any of those offenses, (ii) the attempt, conspiracy, or solicitation of another to commit any of those offenses, (iii) aiding and abetting any of those offenses.

(b) If the court finds that the juvenile is a danger to the community and must register, the presiding judge shall conduct the notification procedures specified in G.S. 14-208.8. The chief court counselor of that district shall file the registration information for the juvenile with the appropriate sheriff.

(1997-516, s. 1; 1999-363, s. 2.)

§ 14-208.27. Change of address.

If a juvenile who is adjudicated delinquent and required to register changes address, the juvenile court counselor for the juvenile shall provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the juvenile had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the juvenile moves to another county in this State, the Division shall inform the sheriff of the new county of the juvenile's new residence.

(1997-516, s. 1; 2001-490, s. 2.36.)

§ 14-208.28. Verification of registration information.

The information provided to the sheriff shall be verified annually for each juvenile registrant as follows:

(1) Every year on the anniversary of a juvenile's initial registration date, the sheriff shall mail a verification form to the juvenile court counselor assigned to the juvenile.

(2) The juvenile court counselor for the juvenile shall return the verification form to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the juvenile court counselor and the juvenile and shall indicate whether the juvenile still resides at the address last reported to the sheriff. If the juvenile has a different address, then that fact and the new address shall be indicated on the form.

(1997-516, s. 1; 2001-490, s. 2.37.)

§ 14-208.29. Registration information is not public record; access to registration information available only to law enforcement agencies.

(a) Notwithstanding any other provision of law, the information regarding a juvenile required to register under this Part is not public record and is not available for public inspection.

(b) The registration information of a juvenile adjudicated delinquent and required to register under this Part shall be maintained separately by the sheriff and released only to law enforcement agencies. Under no circumstances shall the registration of a juvenile adjudicated delinquent be included in the county or statewide registries, or be made available to the public via internet.

(1997-516, s. 1.)

§ 14-208.30. Termination of registration requirement.

The requirement that a juvenile adjudicated delinquent register under this Part automatically terminates on the juvenile's eighteenth birthday or when the jurisdiction of the juvenile court with regard to the juvenile ends, whichever occurs first.

(1997-516, s. 1.)

§ 14-208.31. File with Police Information Network.

(a) The Division shall include the registration information in the Police Information Network as set forth in G.S. 114-10.1.

(b) The Division shall maintain the registration information permanently even after the registrant's reporting requirement expires; however, the records shall remain confidential in accordance with Article 32 of Chapter 7B of the General Statutes.

(1997-516, s. 1; 1998-202, s. 14.)

§ 14-208.32. Application of Part.

This Part does not apply to a juvenile who is tried and convicted as an adult for committing or attempting to commit a sexually violent offense or an offense against a minor. A juvenile who is convicted of one of those offenses as an adult is subject to the registration requirements of Part 2 and Part 3 of this Article.

(1997-516, s. 1.)

Sex Offender Registration Requirements

Who must register?

- Any resident of NC convicted of a "reportable conviction" on or after January 1, 1996.
- Any resident of NC released from prison for a "reportable conviction" on or after January 1, 1996.
- A nonresident student (enrolled in any school part-time or full-time) who has a "reportable conviction" or is required to register in the person's state of registry.
- A nonresident worker (works more than 14 days at a time, or an aggregate of more than 30 days in a year) who has a "reportable conviction" or is required to register in the person's state of registry.

Term of Registration

- 10 years for anyone with a "reportable conviction"
- Life for anyone with a "reportable conviction" who is either:
    - Found to be a "sexually violent predator"
    - Is a recidivist, or
    - Is convicted of an "aggravated offense"
        - An aggravated offense is any offense that includes either:
            - A sexual act involving vaginal, anal or oral penetration with a victim of any age through the use of force or the threat of serious violence, or
            - A sexual act involving vaginal, anal, or oral penetration with a victim less than 12 years old.

Information obtained

- 10 year registry:
    - Full name, aliases, date of birth, sex, race, height, weight, eye color, hair color, drivers' license number and home address
    - Type of offense, date of conviction, sentence imposed
    - Current photograph
    - Fingerprints
    - Statement indicating enrollment or intent to enroll as a student, and name and address of educational institution enrolled
    - Statement indicating employment or expected employment at an institute of higher education, and name and address of educational institution.

- Lifetime registry:
    - All information for 10 year registry
    - Identifying factors
    - Offense history

- Documentation of any treatment received for mental abnormality or personality disorder

Verification of address

- 10 year registry – once every year on anniversary of initial registration date
- Lifetime registry – once every 90 days

Failure to Register

It is a Class F felony for anyone required to register to do any of the following:

- Fail to register
- Fail to notify the last registering sheriff of a change of address
- Fail to return a verification notice
- Forge or submit under false pretenses the information or verification notices required
- Fail to inform the registering sheriff of enrollment or termination of enrollment as a student
- Fail to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

Probation officers, parole officers, or any other law enforcement officer aware of the violation shall immediately arrest the person or seek an order for arrest.

Offenses Requiring Sex Offender Registration
(Adult)

"**Reportable conviction**" includes:

"**Offenses against a minor**" – apply if the offense is committed against a minor, and the person committing the offense is not the minor's parent.

14-39	Kidnapping
14-41	Abduction of Children
14-43.3	Felonious Restraint

Also includes any solicitation or conspiracy to commit any of these offenses, and any aiding and abetting any of these offenses, if the person convicted is not the minor's parent.

"**Sexually violent offense**"

14-27.2	First degree rape
14-27.3	Second degree rape
14-27.4	First degree sexual offense
14-27.5	Second degree sexual offense
14-27.5A	Sexual battery
14-27.6	Attempted rape or sexual offense
14-27.7	Intercourse and sexual offense with certain victims
14-178	Incest between near relatives
14-190.6	Employing or permitting a minor to assist in offenses against public morality and decency
14-190.9(a1)	Felonious indecent exposure
14-190.16	First degree sexual exploitation of a minor
14-190.17	Second degree sexual exploitation of a minor
14-190.17A	Third degree sexual exploitation of a minor
14-190.18	Promoting prostitution of a minor
14-190.19	Participating in the prostitution of a minor
14-202.1	Taking indecent liberties with children
14-202.3	Solicitation of child by computer to commit an unlawful sex act

Attempt to commit any "offense against a minor" or "sexually violent offense"

Aiding and abetting any "sexually violent offense" if the sentencing court finds that the registration of that individual furthers the purposes of this Article as stated in 14-208.5

Conviction in another state of an offense, which if committed in this State, is substantially similar to an "offense against a minor" or "sexually violent offense".

Conviction in a federal jurisdiction, including a court martial, of an offense, which if committed in this State is substantially similar to an "offense against a minor" or "sexually violent offense"

Secret Peeping – A conviction under 14-202(d), (e), (f), (g), or (h), or a second or subsequent conviction under 14-202(a), (a1), or (c), only if the sentencing court finds the person is a danger to the community and that requiring that individual to register furthers the purposes of the Article as stated in 14-208.5

Juvenile Sex Offender Registration**

Offenses

14-27.2	First degree rape
14-27.3	Second degree rape
14-27.4	First degree sexual offense
14-27.5	Second degree sexual offense
14-27.6	Attempted rape or sexual offense

Also included are the attempt, conspiracy, or solicitation to commit any of these offenses, and aiding and abetting any of these offenses.

Required Findings

If the juvenile was at least 11 years old at the time of the offense, the court must consider whether the juvenile is a danger to the community, and if so, whether the juvenile should be required to register.

Confidentiality

Registration information is NOT public record and is not available for public inspection. Registration information is maintained separately by the sheriff and released only to law enforcement agencies. Registration information is not included in the county or statewide registries.

Length of Registration

Registration requirements automatically terminate on the juvenile's 18th birthday, or when the jurisdiction of the juvenile court ends, whichever occurs first.

The registration information is maintained permanently, even after the registration requirement ends, however the records remain confidential in accordance with the provisions of Chapter 7B of General Statutes (Juvenile Code).

**A juvenile that is transferred to superior court and convicted as an adult is subject to the same registration requirements as an adult, and is not covered under the provisions in these statutes.

VISITOR REGISTRATION SHEET

JUDICIARY IV — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chet Hodgin	Victims of Violence PO Box 548 Jamestown 27282
Mildred Spearman	NCDOC
Tim Moose	NCDOC
Carrie Randa	NCCASA
David Cartrette	NC Bar Association
Joe Grew	Intern from Ravenscroft School for Grier Martin
Selena Berrier	Child Fatality Task Force
Caroline Reinke	Action for Children
Brian Ball	Fiscal Research
Tom Vaughn	AFC
Holly Bryan	NCATL

VISITOR REGISTRATION SHEET

JUDICIARY IV — May 23, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jennifer Rudinger	ACLU of NC, Raleigh
Guy Mc[illegible]	NC AGO
John Madler	NC Sentencing Commission
Eddie Caldwell	NC Sheriffs' Assn.
Johanna Reese	DOT
Tony Spence	DOT/DMV
Paul Pulley	NCATL
Cally Wiggins	Gov. office
Rick Zechini	NCAR

2221
Rep Wells

Ran, 415

House Pages

Name Of Committee: J IV Date: 5-23-06

1. Name: Casey Horne
   County: Columbus
   Sponsor: Hill
2. Name: Candace Davis
   County: Columbus
   Sponsor: Hill
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: FRED HINES
2. Name: JERALD PERRY
3. Name: FRANK PREVO
4. Name:
5. Name:

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 30, 2006

The House Committee on Judiciary IV met on Tuesday, May 30, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray, Tim Spear and staff attorneys Trina Griffin, Steve Rose and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss asked Staff Attorney Trina Griffin to walk through HB 1903 – INCREASE PROTECTION FROM SEX OFFENDERS/FUNDS. Following Ms. Griffin's explanation of the bill, Chairman Weiss introduced Attorney General Roy Cooper who spoke on the bill. The Attorney General talked about new technology the NC Sex Offender Watch program will use to provide more current information as to the location of sex offenders. He also outlined the funding request that his office is making for the program, including funding for 5 new forensics investigators, 2 new DNA investigators and further funding to enable the NC Justice Academy to provide more training for local law enforcement. See Attachment. Discussion followed. Representative Glazier moved that HB 1903 be given a favorable report and be re-referred to the Committee on Appropriations. The motion was adopted.

House Bill 1871 – SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK was the next bill on the agenda. A Proposed Committee Substitute was presented. Representative Parmon moved to accept the PCS for discussion. Staff Attorney Jennifer McGinnis was asked to explain the bill. Representative Goforth, Primary Sponsor, spoke on the bill; he said the bill came out of the House Select Committee on Sex Offender Registration Laws that he and Representative Ray chaired. Attachments #1 and #2 were distributed. Representative Glazier commented on the work that has been done on the bill by Sheriff's Association, the Attorney General's office, Representative Weiss, Committee staff and others. Mr. Eddie Caldwell, Executive Director of the NC Sheriff's Association, said that his organization would like Section 5 of the bill to apply only to those from out-of-state, rather than all sex offenders. He said he feels that this is the intent of the Section.

At this point in the meeting, a member of the public who was attending fainted. After EMS personnel arrived and the woman was assisted from the room, Chairman Weiss announced she was adjourning the meeting and that further work would be done on HB 1871 and it would be heard at the meeting on June 1, 2006.

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

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda; HB 1903: Copy of Bill, Attachment from Department of Justice Committee Report; HB 1871: Copy of Bill, Fiscal Note, Bill Analysis, PCS, Attachments 1 & 2; Visitor Registration, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, May 30, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 1903 - INCREASE PROTECTION FROM SEX OFFENDERS/FUNDS.
Representative Karen Ray

HB 1871 - SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK.
Representative Bruce Goforth

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1903

Short Title:	Increase Protection from Sex Offenders/Funds.	(Public)
Sponsors:	Representatives Ray, Goforth, Glazier, Farmer-Butterfield (Primary Sponsors); B. Allen, L. Allen, Blust, Brown, Capps, Clary, Coates, Dollar, England, Faison, Fisher, Frye, Goodwin, Grady, Harrell, Harrison, Hilton, Hollo, Holloway, Howard, Johnson, Ed Jones, LaRoque, Lewis, Lucas, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Stiller, Underhill, Vinson, Weiss, Wiley, and Wray.	
Referred to:	Judiciary IV, if favorable, Appropriations.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO FULLY FUND THE NORTH CAROLINA SEX OFFENDER WATCH PROGRAM, TO HELP FUND INCREASED LAW ENFORCEMENT EFFORTS TO PROTECT CHILDREN AND ADULTS FROM SEX OFFENDERS, AND TO ASSIST WITH LAW ENFORCEMENT TRAINING NEEDS AT THE JUSTICE ACADEMY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. There is appropriated from the General Fund to the Department of Justice the sum of three hundred three thousand five hundred sixty-four dollars ($303,564) for the 2006-2007 fiscal year to fully fund the North Carolina Sex Offender Watch Program and to support two new information technology staff positions for that program. The North Carolina Sex Offender Watch Program allows citizens, employers, day care centers, schools, and other users to sign up with the Department of Justice to receive proactive e-mail alert notifications each time a sex offender registers an address within a mile of any address specified by the user in North Carolina. The Program also provides a tool to allow users to enter any North Carolina address and view a map of all adult sex offenders who live within a mile of the specified location through GIS mapping.

SECTION 2. There is appropriated from the General Fund to the Department of Justice the sum of three hundred sixty-nine thousand three hundred eighty-eight dollars ($369,388) for the 2006-2007 fiscal year to provide full funding for five new SBI computer crime and computer forensics investigators to increase

undercover law enforcement efforts to catch child predators and to speed the analysis of computer forensic evidence used to arrest and prosecute these predators.

SECTION 3. There is appropriated from the General Fund to the Department of Justice the sum of one hundred fifty-five thousand seven hundred four dollars ($155,704) for the 2006-2007 fiscal year to provide full funding for two new DNA investigators to further expedite and improve DNA evidence processing.

SECTION 4. There is appropriated from the General Fund to the Department of Justice the sum of one hundred one thousand eighty dollars ($101,080) for the 2006-2007 fiscal year to establish and support three new positions at the Justice Academy to assist with the Criminal Justice Training and Standards Commission and the Sheriff Standards Division training needs.

SECTION 5. This act becomes effective July 1, 2006.

attachment 1

Attorney General Roy Cooper

North Carolina Department of Justice

- **Provide full funding for the launch of the North Carolina Sex Offender Watch Program. Allows citizens, employers, day care centers, schools and other users to sign up to receive proactive email alert notifications each time a sex offender registers an address within a mile of any address specified by the user in North Carolina. The email notification will include a picture of the offender, and his or her address, age, height, weight, race, hair and eye color, offender classification and offense committed. In addition, provides a tool to allow users to enter any North Carolina address and view a map of all adult sex offenders who live within a mile of the specified location (GIS mapping).**

  FY06-07 Appropriation required $303,564 (2 IT Staff)

- **Provide full funding for 5 new SBI Computer Crime and Computer Forensics investigators to increase undercover law enforcement efforts to catch child predators and speed the analysis of computer forensic evidence used to arrest and prosecute these predators.**

  FY06-07 Appropriation required $369,388

- **Provide full funding for 2 new DNA investigators to further expedite and improve DNA evidence processing. DNA evidence is critical evidence that can be used to identify suspects and convict sex offenders.**

  FY06-07 Appropriation required $155,704

- **Increase investments in the North Carolina Justice Academy in order to provide more training for local law enforcement. Increasing the training capability of the Academy will allow it to train more local officers to use the new law, the Child Exploitation Prevention Act, to go undercover to catch Internet sexual predators who attempt to prey on our children.**

attachment
NB 1903

Attorney General Roy Cooper
North Carolina Department of Justice
North Carolina Sex Offender Watch

More than 9,900 convicted sex offenders are currently listed on the North Carolina Sex Offender Registry. Through the Registry, people across the state can learn the names, addresses, and offenses of sex offenders and view their photos online. However, local law enforcement knows that some sex offenders move frequently and, more troubling, hunt for new victims. Informing people more quickly and pinpointing where sex offenders live will help parents protect children from predators.

The **NC Sex Offender Watch** will use new technology to provide more current and useful information by:

- Allowing residents of a community to be notified by e-mail immediately when a sex offender moves into their neighborhood, and
- Using mapping to show exactly where an offender lives in relation to a neighborhood, school, day care center, business or any other location of concern.

Through e-mail notification, the Sex Offender Watch program will quickly tell victims, their families and the public about the presence of registered sex offenders in their communities. Without it, an offender can move into in a neighborhood or near a school without parents or school officials knowing. This program, will allow users who visit the sex offender website to request an e-mail alert whenever a registered sex offender moves within a mile of the user's home. Users can also receive these proactive proximity warning notifications for other addresses important to them, like their children's' schools, day cares, and their workplace.

Already the NC Department of Justice Sex Offender Registry website is a valuable tool for communities across the state. The website has received more than seven million hits since it was launched in 1998. However, a sex offender can change residences at will, and many offenders move frequently. Users must check regularly to see if any new offenders have moved into their area. Continual or even daily checking of the sex offender registry website is impractical. An electronic notification system will help.

Advanced mapping technology will also show exactly where registered offenders live in relation to a given address within a mile. Day care centers and schools can use this mapping and e-mail notification as well. When day care operators and school officials receive an e-mail, they can alert their staff and share the offender's photograph.

Using this new technology can help families, schools and neighborhoods better plan for their safety. By making the public more aware of the location of registered sex offenders, the program can also help law enforcement crack down on sex offenders who move without providing a new address as required by law.

Proactive community sex offender notification will also include educational information and safety tips to help parents speak frankly with their children about potentially dangerous people living in their community.

over

Rptd out: 5/30/06

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1903 A BILL TO BE ENTITLED AN ACT TO APPROPRIATE FUNDS TO THE DEPARTMENT OF JUSTICE TO FULLY FUND THE NORTH CAROLINA SEX OFFENDER WATCH PROGRAM, TO HELP FUND INCREASED LAW ENFORCEMENT EFFORTS TO PROTECT CHILDREN AND ADULTS FROM SEX OFFENDERS, AND TO ASSIST WITH LAW ENFORCEMENT TRAINING NEEDS AT THE JUSTICE ACADEMY, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ The bill/resolution is re-referred to the Committee on _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1871

Short Title:	Sex Offender/Out of State Registry/DMV Check.	(Public)
Sponsors:	Representatives Goforth, Ray, Glazier (Primary Sponsors); L. Allen, Barnhart, Capps, Carney, Coates, England, Faison, Farmer-Butterfield, Fisher, Frye, Goodwin, Grady, Hilton, Hollo, Holloway, Ed Jones, LaRoque, Lucas, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Sutton, Underhill, Vinson, Weiss, and Wray.	
Referred to:	Judiciary IV.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT REQUIRES REGISTRATION AS A SEX OFFENDER MUST ALSO REGISTER IN NORTH CAROLINA AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO CHECK THE NATIONAL SEX OFFENDER PUBLIC REGISTRY FOR AN APPLICANT'S NAME BEFORE ISSUING EITHER A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD.

The General Assembly of North Carolina enacts:

SECTION 1. 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), (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.

e. A final conviction in another state of an offense which requires registration under the sex offender registration statutes of that state."

SECTION 2. G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state. If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes. If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

If the Division is unable to access the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall check the National Sex Offender Public Registry for the person's name within a reasonable time after access to the Registry is restored. If the person's name does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license as provided by G.S. 20-17 and shall notify the appropriate law enforcement officer of the offense. The law enforcement officer shall obtain a warrant for the person's arrest and take the person into custody."

SECTION 3. G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Check National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state. If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes. If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit

acknowledging that the person has been notified that if the person is a sex offender then, the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

If the Division is unable to access the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall check the National Sex Offender Public Registry for the person's name within a reasonable time after access to the Registry is restored. If the person's name does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8, and the Division shall immediately notify the appropriate law enforcement officer of the offense. The law enforcement officer shall obtain a warrant for the person's arrest and take the person into custody."

SECTION 4. This act becomes effective December 1, 2006, and applies to all applications for a drivers license or special identification card submitted on or after that date and to all offenses committed on or after that date.

HOUSE BILL 1871:
Sex Offender/Out of State Registry/DMV Check

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 30, 2006
Introduced by:	Reps. Goforth, Ray, Glazier	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1871-CSRI-22		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1871 would: (i) provide that a person convicted of an offense in another state that requires registration as a sex offender must also register in North Carolina, (ii) require that the Division of Motor Vehicles (DMV) provide notice of sex offender registration requirements in the State to applicants for a drivers license, learner's permit, instruction permit, and identification card; and (iii) require that the Division of Motor Vehicles (DMV) must search the National Sex Offender Public Registry (National Registry) for an applicant's name before issuing either a drivers license or special identification card.

CURRENT LAW: G.S. 14-208.7 requires a person who is a State resident and who has a reportable conviction to maintain registration as a sex offender with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person is required to register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. Sex offenders who are released from penal institutions in North Carolina and sex offenders who are sentenced by North Carolina courts are notified before release or at the time of sentencing of the duty to register under the State's Sex Offender and Public Protection Registration Programs. If the offender moves to North Carolina from another state and has been convicted in another state of an offense that is substantially similar to an offense that would require registration in North Carolina, then that person must also register here.

Failure to comply with the registration requirements is a Class F felony.

BILL ANALYSIS: House Bill 1871 would:

- Provide that a person convicted of an offense in another state that requires registration as a sex offender must also register in North Carolina.
- Require that DMV must provide notice of the State's sex offender registration requirements to applicants for driver's licenses, learner's permits, instruction permits, and identification cards.
- Require that, with regard to applicants from other states, DMV must search the National Registry for the person before issuing either a drivers license or special identification card.
  - ➢ If DMV finds that the person appears on the National Registry as registered as a sex offender in another state, DMV must not issue a license until the person submits proof of registration in North Carolina.
  - ➢ If the person does not appear on the National Registry, DMV must issue the license but require the person to sign an affidavit that the person has been notified of the State's sex offender registration requirements.
  - ➢ If DMV is unable to access the National Registry it must issue a license to an otherwise qualified applicant but have the applicant sign an affidavit stating that they (i) received notification of the State registration requirements, and (ii) are not listed on the National Registry. If DMV finds

after accessing the National Registry that the person is in fact listed on the National Registry, DMV shall revoke the person's license and notify appropriate law enforcement.

CHANGES MADE BY PCS: The PCS makes the following changes:

- Adds a new Section 2 that requires DMV to provide notice of sex offender registration requirements.
- Clarifies that "proof of registration", as used in the 1st edition of the bill on page 2, lines 16-17 and 41-42, must be issued by the sheriff of the county where the person resides. Adds a new subdivision to G.S. 14-208.7 to require sheriffs to provide proof of registration to persons at the time of registration.
- Clarifies who "the appropriate law enforcement officer" is, as used in the 1st edition of the bill on page 2, line 22 and page 3, lines 13-14 (now sheriff of the county where the person resides).
- Deletes language on page 2, lines 33-34 and page 3, lines 14-15 in the 1st edition of the bill requiring that a law enforcement officer must apply for a warrant for a person's arrest and take a person into custody (for violation of the provisions of the subsection).
- Adds a process that entitles a person denied a license or special identification card, or whose license was revoked, pursuant to the subsection to a hearing on the matter.
- Makes other technical and clarifying changes.

EFFECTIVE DATE: This bill would become effective December 1, 2006, and apply to applications for licenses and identification cards submitted on or after that date.

H1871e1-SMRI-CSRI

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1871
PROPOSED COMMITTEE SUBSTITUTE H1871-CSRI-22 [v.10]

5/29/2006 1:06:37 PM

Short Title: Sex Offender/Out of State Registry/DMV Check. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT REQUIRES REGISTRATION AS A SEX OFFENDER MUST ALSO REGISTER IN NORTH CAROLINA; TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO PROVIDE NOTICE OF SEX OFFENDER REGISTRATION REQUIREMENTS TO APPLICANTS FOR A DRIVERS LICENSE, LEARNER'S PERMIT, INSTRUCTION PERMIT, OR IDENTIFICATION CARD; AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO SEARCH THE NATIONAL SEX OFFENDER PUBLIC REGISTRY FOR AN APPLICANT'S NAME BEFORE ISSUING EITHER A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD.

The General Assembly of North Carolina enacts:

SECTION 1. 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), (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.

e. A final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state."

SECTION 2. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-9.3. Notification of requirements for sex offender registration.**

The Division shall provide notice to each person who applies for the issuance of a drivers license, learner's permit, or instruction permit to operate a motor vehicle, and to each person who applies for an identification card, that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes."

SECTION 3. G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex

Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a license or whose license has been revoked by the Division pursuant to this subsection, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-30."

SECTION 4. G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Search National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8,

and the Division shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a special identification card by the Division pursuant to this subsection, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a special identification card under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-37.8."

SECTION 5. G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) At the time a person registers, the sheriff with whom the person registered shall provide written proof of registration to the person."

SECTION 6. This act becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 1871 (First Edition)

SHORT TITLE: Sex Offender/Out of State Registry/DMV Check.

SPONSOR(S): Representatives Goforth, Ray, and Glazier

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	-	-	-	-	-
DMV Personnel	**$0 - $60,400**	**$0 - $106,648**	**$0 - $109,847**	**$0 - $113,143**	**$0 - $116,537**
Equipment	**$0-$11,100**	-	-	-	-
Uniforms	**$0 - $900**	**$0 - $900**	**$0 - $900**	**$0 - $900**	**$0 - $900**
Range of Total Costs	**$0 - $74,400**	**$0 - $107,548**	**$0 - $110,747**	**$0 - $114,043**	**$0 - $117,437**
POSITIONS (cumulative):	**0 – 3**	**0 – 3**	**0 – 3**	**0 – 3**	**0 - 3**
Department of Crime Control and Public Safety	**No estimate available**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:
Division of Motor Vehicles

EFFECTIVE DATE: December 1, 2006

BILL SUMMARY:
This bill rewrites the General Statute governing the North Carolina reportable sex offenses to include convictions in other states that require registration under the sex offender registration statutes of that state. The Division of Motor Vehicles will not be allowed to issue a drivers license or a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the applicant is registered as a sex offender in another state. If the individual's name appears on the national registry, the driver

license and special identification card will not be issued until the applicant submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes.

If the internet is nonworking in the driver license office at which the applicant is seeking a license or special identification, the individual must sign an affidavit stating that he/she is not on the National Sex Offender Public Registry in order to receive the license or identification. When the internet is accessible, the Division must verify that the individual did not appear on the registry. If it is found that the individual does appear on the national registry, the Division shall immediately revote the drivers license and notify an appropriate law enforcement officer of the offense. The officer shall obtain a warrant for the person's arrest and take the individual into custody.

ASSUMPTIONS AND METHODOLOGY:

- All local driver license offices and mobile units are currently equipped with computers and internet connections. This service could be provided at no additional costs; however, in order to maintain the current quality level of customer service, additional positions could be added to handle the additional workload that this added service would entail.
- The North Carolina Department of Transportation, Division of Motor Vehicles estimates that approximately 320,000 individuals present as first time customers to drivers license offices. Of those, approximately 40% are projected to be born in other states; therefore, it is estimated that approximately 128,000 searches will be conducted each year. Each search is estimated to take approximately 1-2 minutes on average, and the printing and signing of the affidavit would take one minute, for a total of approximately 6,400 additional customer hours. It is estimated that an additional three full-time equivalent positions are estimated to cover the additional hours of service.
- Any positions would be filled in December, per the effective date of the bill. The fiscal estimate accounts for up to three positions beginning in December and these positions are annualized beginning in FY2007-08 with a 3% cost of living adjustment included.
- It is projected that the impact this of this act on the Department of Crime Control and Public Safety will be minimal.

SOURCES OF DATA:
North Carolina Department of Transportation

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lisa Hollowell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official Fiscal Research Division Publication

DATE: May 23, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

Document 1 of 1

Source:
Michie's North Carolina Primary Law/General Statutes of North Carolina/Chapter 20. Motor Vehicles. /ARTICLE 2. Uniform Driver's License Act. /§ 20-25. Right of appeal to court.

§ 20-25. Right of appeal to court.

Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. Provided, a judge of the district court shall have limited jurisdiction under this section to sign and enter a temporary restraining order only.

(1935, c. 52, s. 19; 1975, c. 716, s. 5; 1987, c. 659, s. 1.)

CASE NOTES

Power to Suspend or Revoke Licenses Vested Exclusively in Department (now Division) of Motor Vehicles. - By Session Laws 1941, c. 36 (G.S. 20-1, 20-2, 20-3 and 20-4), the power to suspend or revoke drivers' licenses after July 1, 1941, vested exclusively in the newly created Department (now Division) of Motor Vehicles, subject to the same right of review by the superior court as existed prior to that date. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944).

Section Construed with G.S. 20-23. - This section and G.S. 20-23 must be construed in pari materia. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute. These, under express provisions of this section, include full de novo review by a superior court judge, at the election of the licensee, in all cases except where the suspension or revocation is mandatory. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968).

Provisions Satisfy Requirements of Due Process. - The provisions of G.S. 20-48, together with the provisions of G.S. 20-16(d), relating to the right of review, and the provisions of this section, relating to the right of appeal, satisfy the requirements of procedural due process. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Atwood, 27 N.C. App. 445, 219 S.E.2d 521 (1975), rev'd on other grounds, 290 N.C. 266, 225 S.E.2d 543 (1976).

This section creates no right to appeal a suspension under G.S. 20-4.20(b). The General Assembly simply has not yet provided for appeals from suspension under G.S. 20-4.20(b). Palmer v. Wilkins, 73 N.C. App. 171, 325 S.E.2d 697 (1985).

A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the superior court of Wake County pursuant to former G.S. 150A-45 and may not obtain a hearing under the present section in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

Certiorari to Review Mandatory Suspension. - Petitioner whose driving privilege was mandatorily

suspended under G.S. 20-17(2) and G.S. 20-19(e) did not have the right to appeal under this section or under the Administrative Procedure Act, Chapter 150B. However, the superior court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Where petitioner, seeking conditional restoration of his driving privileges, pled sufficient facts to show he did not have right to appeal from final decision of DMV, he could then have petitioned for writ of certiorari to have case reviewed by superior court. Thus, superior court had jurisdiction to review case. Penuel v. Hiatt, 100 N.C. App. 268, 396 S.E.2d 85 (1990).

Discretionary suspensions and revocations of driving licenses by the department (now Division) of Motor Vehicles are reviewable under this section. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944); In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Trial court correctly reviewed the North Carolina Division of Motor Vehicles' cancellation of a driver's conditionally restored driving privileges under a petition for writ of certiorari rather than de novo review because although there was no right to appeal a cancellation or revocation under G.S. 20-25, the driver could seek certiorari pursuant to G.S. 20-19(e). Cole v. Faulkner, 155 N.C. App. 592, 573 S.E.2d 614 (2002).

Discretionary revocations and suspensions may be reviewed by the court under this section, while mandatory revocations and suspensions may not. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968); Taylor v. Garrett, 7 N.C. App. 473, 173 S.E.2d 31 (1970).

Discretionary revocation of a driver's license is reviewable under the provisions of this section but mandatory revocations are not. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

By Trial De Novo. - All suspensions, cancellations and revocations of driving licenses made in the discretion of the Department (now Division) of Motor Vehicles, whether under G.S. 20-16, 20-23 or any other provision of this Chapter, are reviewable by trial de novo. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

The hearing in the superior court is de novo, and the court is not bound by the findings of fact or the conclusions of law made by the Department (now Division). In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954).

Upon the filing of a petition for review, it is the duty of the judge, after notice to the Department (now Division), "to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this Article." This is more than a review as upon a writ of certiorari. It is a rehearing de novo, and the judge is not bound by the findings of fact or the conclusions of law made by the Department (now Division). Else why "take testimony," "examine into the facts," and "determine" the question at issue? Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

Any person whose driver's license has been suspended under G.S. 20-16.2(d) has the right to a full de novo review by a superior court judge. This means the court must hear the matter on its merits from beginning to end as if no trial or hearing had been held by the Department (now Division) and without any presumption in favor of its decision. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Section 20-25 creates no right to appeal a revocation under G.S. 20-138.5, since G.S. 20-138.5 appears in Article 3 rather than Article 2. Following a conviction for habitual impaired driving, under that section, permanent revocation is mandatory and the trial court lacks the authority to provide relief. Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512 (2000).

But mandatory revocations under § 20-17 are not reviewable. And no right accrues to a licensee who petitions for a review of the order of the Department (now Division) when it acts under the terms of G.S. 20-17, for then its action is mandatory. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948); Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); Mintz v. Scheidt, 241 N.C. 268, 84 S.E.2d 882 (1954).

There is no right of judicial review when the revocation is mandatory pursuant to the provisions of G.S. 20-17. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969); Rhyne v. Garrett, 18 N.C. App. 565, 197 S.E.2d 235 (1973).

Mandatory Revocation Was Not Reviewable under § 150B-43. - Where revocation issued by Division of Motor Vehicles (DMV) was mandatory, superior court did not have jurisdiction to review order of revocation pursuant to G.S. 150B-43 as licenses issued under Chapter 20 are expressly excluded under G.S. 150B-2. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

The jurisdiction vested by this section is not a delegation of legislative and administrative authority. The review is judicial and is governed by the standards and guides which are applicable to other judicial proceedings. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Such jurisdiction is not the limited, inherent power of courts to review the discretionary acts of an administrative officer. The power is conferred by statute, and the statute must be looked to in order to ascertain the nature and extent of the review contemplated by the legislature. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

The Section Imposes Additional Jurisdiction. - The court has inherent authority to review the discretionary action of an administrative agency whenever such action affects personal or property rights, upon a prima facie showing, by petition for a writ of certiorari, that such agency has acted arbitrarily, capriciously, or in disregard of law. This section dispenses with the necessity of an application for writ of certiorari, provides for direct approach to the courts and enlarges the scope of the hearing. That the legislature had full authority to impose this additional jurisdiction upon the courts is beyond question. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

But no discretionary power is conferred upon the court in reviewing the suspension or revocation of driving licenses, and the court may determine only if, upon the facts, petitioner's license is subject to suspension or revocation under the provisions of the statute. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

On appeal and hearing de novo in the superior court, that court is not vested with discretionary authority. It makes judicial review of the facts, and if it finds that the license of petitioner is in fact and in law subject to suspension or revocation, the order of the Department (now Division) must be affirmed; otherwise not. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963); Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

No discretionary power is conferred upon the court in matters pertaining to the revocation of licenses. If, under the facts found by the judge, the statute requires the suspension or revocation of petitioner's license, the order of the Department (now Division) entered in conformity with the facts found must be affirmed. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

And failure of the section to provide standards for the guidance of the courts does not invalidate it or negate the jurisdiction. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Remedy for Improper Deprivation of License. - If an individual has been improperly deprived of his license by the Department (now Division) of Motor Vehicles due to a mistake of law or fact, his remedy is to apply for a hearing as provided by G.S. 20-16(d), or by application to the superior court as permitted by this section. At a hearing held pursuant to either of these sections, he would be permitted to show that the suspension was erroneous. He could not ignore the quasi-judicial determination made by the Department (now Division). Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960).

Hearing by Division Is Prerequisite to Court Review. - Section 20-16(d) provides for a rehearing by the Department (now Division) of Motor Vehicles upon application of a licensee whose license has been suspended, and this procedure should be followed and should be made to appear in the petition before review by the superior court. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

Errors in Administrative Proceedings Are Rendered Harmless by Hearing De Novo. - If any errors were committed in the administrative proceedings, they are rendered harmless by the hearing de novo on appeal. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

attachment 2
HB 1871

REGISTRATION REQUIREMENT FOR CERTAIN OFFENDERS

I acknowledge that the Division of Motor Vehicles has notified me that, pursuant to N.C. General Statute § 14-208.7, any person who has been convicted in any state of an offense against a minor or a sexually violent offense as defined in N.C. General Statute § 14-208.6 is required to register with the sheriff of the county where the person resides within 10 days of establishing residence in this state, or whenever the person has been present in this state for 15 days, whichever comes first. I certify, under penalty of perjury, that I understand my requirement to register if I have been convicted of an offense that requires registration as a sex offender.

Any person convicted of any of the above-referenced offenses must report to the Sheriff in their county of residence for a specific determination as to their requirement to register.

_____
(Date)

_____
(Print Full Name)

_____
(Signature of Applicant)

VISITOR REGISTRATION SHEET

JUDICIARY IV — Name of Committee

Tuesday, Mary 30, 2006 — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Wendy Brinkley	SBI
Jerry Ratley	SBI
Tim Moose	NC DOC
Tony Spence	DOT / DMV
Camie Randa	NCCHSA
DAVID CARTNER	NC Bar Association
Kristin Richards	Office of GOV.
Cally Wiggins	office of GOV
Holly Bryan	NCATL
Mildred Spearman	
John Madler	NC Sentencing Commission

VISITOR REGISTRATION SHEET

JUDICIARY IV — Tuesday, Mary 30, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Wolfe	Daily Bulletin
Cameron Contizano	Daily Bulletin
Ryan Pusley	Rep - Blazer

House Pages

Name Of Committee: JIV Date: 5/30/06

Mary Price, Ryan Presley - Interns
Glazier

1. Name: Brandon Ring
   County: Stokes
   Sponsor: Brian Holloway
2. Name: Ian Dear
   County: Wake
   Sponsor: James Black
3. Name:
   County:
   Sponsor:
4. Name:
   County:
   Sponsor:
5. Name:
   County:
   Sponsor:

Sgt-At-Arms

1. Name: Fred Hines
2. Name: MARK CONE
3. Name: GERALD PERRY
4. Name:
5. Name:

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Thursday, June 01, 2006

The House Committee on Judiciary IV met on Thursday, June 1, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Karen Ray and Tim Spear and staff attorneys Trina Griffin, Jennifer McGinnis and Steve Rose. The Pages and Sergeants-at-Arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

House Bill 1871 – SEX OFFENDER/OUT OF STATE REGISTRY/DMV CHECK which was continued from the May 30th meeting, was first on the agenda. In answer to a question raised at that meeting, Mr. Eddie Caldwell, Executive Director of the NC Sheriff's Association, reported that the sheriffs are fine with providing proof of registration to sex offenders who register. Representative Glazier moved that the Proposed Committee Substitute for HB 1871 receive a favorable report, unfavorable to the original bill, and that HB 1871 be re-referred to the Committee on Appropriations. The motion was adopted.

Representative Ray, Sponsor, was invited to speak on HB 1902 – GPS MONITORING OF SOME SEX OFFENDERS/FUNDS. A Proposed Committee Substitute was presented; Representative Spear moved that the PCS be adopted for discussion purposes. Trina Griffin, Staff Attorney, explained the bill. Before the bill was presented a statement from the American Civil Liberties Union of North Carolina in opposition to HB 1902 was distributed. (See Attachment.) Mr. Robert Guy, Director of Community Corrections, NC Department of Corrections, spoke of the work his department is doing in tracking sex offenders and the need for better tracking methods. He explained the differences in the active and passive GPS tracking systems, and a house arrest system. In using the active GPS system in a pilot program, officers found it to be the best system; it has an exclusion and inclusion zone program and better tracking. There is concern about loss of signals in some areas and a lack of towers in some areas. Three hundred sex offenders would be in the active GPS program in the first year. Discussion on the bill followed. Concerns were raised on the method and timing of the remittance of fees. A question on the definition of "reportable conviction" was raised. Mr. Dick Taylor, Academy of Trial Lawyers, stated that they thought the GPS system would cover the 1st tier category only and not the 2nd tier category. Representative Weiss said that more work will be done on the bill and that it will be carried over to the meeting on June 6th.

There being no further business, the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; HB 1871: Copy of Bill, Proposed Committee Substitute, Bill Analysis, Fiscal Note, attachments, Committee Substitute, Committee Report; HB 1902: Copy of Bill, Proposed Committee Substitute, Bill Analysis, ACLU attachment; Visitor Registration, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, June 1, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 1871 - SEX OFFENDERS/OUT OF STATE REGISTRY/DMV CHECK.
Representative Ray

HB 1902 - GPS MONITORING OF SOME SEX OFFENDERS/FUNDS.
Representative Ray

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 1871

Short Title:	Sex Offender/Out of State Registry/DMV Check.	(Public)
Sponsors:	Representatives Goforth, Ray, Glazier (Primary Sponsors); L. Allen, Barnhart, Capps, Carney, Coates, England, Faison, Farmer-Butterfield, Fisher, Frye, Goodwin, Grady, Hilton, Hollo, Holloway, Ed Jones, LaRoque, Lucas, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Sutton, Underhill, Vinson, Weiss, and Wray.	
Referred to:	Judiciary IV.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT REQUIRES REGISTRATION AS A SEX OFFENDER MUST ALSO REGISTER IN NORTH CAROLINA AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO CHECK THE NATIONAL SEX OFFENDER PUBLIC REGISTRY FOR AN APPLICANT'S NAME BEFORE ISSUING EITHER A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD.

The General Assembly of North Carolina enacts:

SECTION 1. 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), (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.

e. A final conviction in another state of an offense which requires registration under the sex offender registration statutes of that state."

SECTION 2. G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state. If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes. If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

If the Division is unable to access the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall check the National Sex Offender Public Registry for the person's name within a reasonable time after access to the Registry is restored. If the person's name does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license as provided by G.S. 20-17 and shall notify the appropriate law enforcement officer of the offense. The law enforcement officer shall obtain a warrant for the person's arrest and take the person into custody."

SECTION 3. G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Check National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state. If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes. If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit

acknowledging that the person has been notified that if the person is a sex offender then, the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

If the Division is unable to access the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall check the National Sex Offender Public Registry for the person's name within a reasonable time after access to the Registry is restored. If the person's name does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8, and the Division shall immediately notify the appropriate law enforcement officer of the offense. The law enforcement officer shall obtain a warrant for the person's arrest and take the person into custody."

SECTION 4. This act becomes effective December 1, 2006, and applies to all applications for a drivers license or special identification card submitted on or after that date and to all offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1871
PROPOSED COMMITTEE SUBSTITUTE H1871-CSRI-22 [v.10]

5/29/2006 1:06:37 PM

Short Title: Sex Offender/Out of State Registry/DMV Check. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT REQUIRES REGISTRATION AS A SEX OFFENDER MUST ALSO REGISTER IN NORTH CAROLINA; TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO PROVIDE NOTICE OF SEX OFFENDER REGISTRATION REQUIREMENTS TO APPLICANTS FOR A DRIVERS LICENSE, LEARNER'S PERMIT, INSTRUCTION PERMIT, OR IDENTIFICATION CARD; AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO SEARCH THE NATIONAL SEX OFFENDER PUBLIC REGISTRY FOR AN APPLICANT'S NAME BEFORE ISSUING EITHER A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD.

The General Assembly of North Carolina enacts:

SECTION 1. 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), (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.

e. A final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state."

SECTION 2. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-9.3. Notification of requirements for sex offender registration.**

The Division shall provide notice to each person who applies for the issuance of a drivers license, learner's permit, or instruction permit to operate a motor vehicle, and to each person who applies for an identification card, that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes."

SECTION 3. G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex

Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a license or whose license has been revoked by the Division pursuant to this subsection, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-30."

SECTION 4. G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Search National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8,

and the Division shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a special identification card by the Division pursuant to this subsection, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a special identification card under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-37.8."

SECTION 5. G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) At the time a person registers, the sheriff with whom the person registered shall provide written proof of registration to the person."

SECTION 6. This act becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date.

HOUSE BILL 1871:
Sex Offender/Out of State Registry/DMV Check

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	May 30, 2006
Introduced by:	Reps. Goforth, Ray, Glazier	**Summary by:**	Jennifer McGinnis
Version:	PCS to First Edition H1871-CSRI-22		Committee Counsel

SUMMARY: The Proposed Committee Substitute (PCS) for House Bill 1871 would: (i) provide that a person convicted of an offense in another state that requires registration as a sex offender must also register in North Carolina, (ii) require that the Division of Motor Vehicles (DMV) provide notice of sex offender registration requirements in the State to applicants for a drivers license, learner's permit, instruction permit, and identification card; and (iii) require that the Division of Motor Vehicles (DMV) must search the National Sex Offender Public Registry (National Registry) for an applicant's name before issuing either a drivers license or special identification card.

CURRENT LAW: G.S. 14-208.7 requires a person who is a State resident and who has a reportable conviction to maintain registration as a sex offender with the sheriff of the county where the person resides. If the person moves to North Carolina from outside this State, the person is required to register within 10 days of establishing residence in this State, or whenever the person has been present in the State for 15 days, whichever comes first. Sex offenders who are released from penal institutions in North Carolina and sex offenders who are sentenced by North Carolina courts are notified before release or at the time of sentencing of the duty to register under the State's Sex Offender and Public Protection Registration Programs. If the offender moves to North Carolina from another state and has been convicted in another state of an offense that is substantially similar to an offense that would require registration in North Carolina, then that person must also register here.

Failure to comply with the registration requirements is a Class F felony.

BILL ANALYSIS: House Bill 1871 would:

- Provide that a person convicted of an offense in another state that requires registration as a sex offender must also register in North Carolina.
- Require that DMV must provide notice of the State's sex offender registration requirements to applicants for driver's licenses, learner's permits, instruction permits, and identification cards.
- Require that, with regard to applicants from other states, DMV must search the National Registry for the person before issuing either a drivers license or special identification card.
  - ➢ If DMV finds that the person appears on the National Registry as registered as a sex offender in another state, DMV must not issue a license until the person submits proof of registration in North Carolina.
  - ➢ If the person does not appear on the National Registry, DMV must issue the license but require the person to sign an affidavit that the person has been notified of the State's sex offender registration requirements.
  - ➢ If DMV is unable to access the National Registry it must issue a license to an otherwise qualified applicant but have the applicant sign an affidavit stating that they (i) received notification of the State registration requirements, and (ii) are not listed on the National Registry. If DMV finds

after accessing the National Registry that the person is in fact listed on the National Registry, DMV shall revoke the person's license and notify appropriate law enforcement.

CHANGES MADE BY PCS: The PCS makes the following changes:

- Adds a new Section 2 that requires DMV to provide notice of sex offender registration requirements.
- Clarifies that "proof of registration", as used in the 1st edition of the bill on page 2, lines 16-17 and 41-42, must be issued by the sheriff of the county where the person resides. Adds a new subdivision to G.S. 14-208.7 to require sheriffs to provide proof of registration to persons at the time of registration.
- Clarifies who "the appropriate law enforcement officer" is, as used in the 1st edition of the bill on page 2, line 22 and page 3, lines 13-14 (now sheriff of the county where the person resides).
- Deletes language on page 2, lines 33-34 and page 3, lines 14-15 in the 1st edition of the bill requiring that a law enforcement officer must apply for a warrant for a person's arrest and take a person into custody (for violation of the provisions of the subsection).
- Adds a process that entitles a person denied a license or special identification card, or whose license was revoked, pursuant to the subsection to a hearing on the matter.
- Makes other technical and clarifying changes.

EFFECTIVE DATE: This bill would become effective December 1, 2006, and apply to applications for licenses and identification cards submitted on or after that date.

H1871e1-SMRI-CSRI

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

REVISED

BILL NUMBER: House Bill 1871 (First Edition)

SHORT TITLE: Sex Offender/Out of State Registry/DMV Check.

SPONSOR(S): Representatives Goforth, Ray, and Glazier

FISCAL IMPACT

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

	FY 2006-07	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11
REVENUES:	-	-	-	-	-
DMV Personnel	**$0 - $60,400**	**$0 - $106,648**	**$0 - $109,847**	**$0 - $113,143**	**$0 - $116,537**
Equipment	**$0-$11,100**	-	-	-	-
Uniforms	**$0 - $900**	**$0 - $900**	**$0 - $900**	**$0 - $900**	**$0 - $900**
Range of Total Costs	**$0 - $74,400**	**$0 - $107,548**	**$0 - $110,747**	**$0 - $114,043**	**$0 - $117,437**
POSITIONS (cumulative):	**0 – 3**	**0 – 3**	**0 – 3**	**0 – 3**	**0 - 3**
Department of Crime Control and Public Safety	**No estimate available**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

Division of Motor Vehicles

EFFECTIVE DATE: December 1, 2006

BILL SUMMARY:

This bill rewrites the General Statute governing the North Carolina reportable sex offenses to include convictions in other states that require registration under the sex offender registration statutes of that state. The Division of Motor Vehicles will not be allowed to issue a drivers license or a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the applicant is registered as a sex offender in another state. If the individual's name appears on the national registry, the driver

license and special identification card will not be issued until the applicant submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes.

If the internet is nonworking in the driver license office at which the applicant is seeking a license or special identification, the individual must sign an affidavit stating that he/she is not on the National Sex Offender Public Registry in order to receive the license or identification. When the internet is accessible, the Division must verify that the individual did not appear on the registry. If it is found that the individual does appear on the national registry, the Division shall immediately revote the drivers license and notify an appropriate law enforcement officer of the offense. The officer shall obtain a warrant for the person's arrest and take the individual into custody.

ASSUMPTIONS AND METHODOLOGY:

- All local driver license offices and mobile units are currently equipped with computers and internet connections. This service could be provided at no additional costs; however, in order to maintain the current quality level of customer service, additional positions could be added to handle the additional workload that this added service would entail.
- The North Carolina Department of Transportation, Division of Motor Vehicles estimates that approximately 320,000 individuals present as first time customers to drivers license offices. Of those, approximately 40% are projected to be born in other states; therefore, it is estimated that approximately 128,000 searches will be conducted each year. Each search is estimated to take approximately 1-2 minutes on average, and the printing and signing of the affidavit would take one minute, for a total of approximately 6,400 additional customer hours. It is estimated that an additional three full-time equivalent positions are estimated to cover the additional hours of service.
- Any positions would be filled in December, per the effective date of the bill. The fiscal estimate accounts for up to three positions beginning in December and these positions are annualized beginning in FY2007-08 with a 3% cost of living adjustment included.
- It is projected that the impact this of this act on the Department of Crime Control and Public Safety will be minimal.

SOURCES OF DATA:
North Carolina Department of Transportation

TECHNICAL CONSIDERATIONS: None
FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Lisa Hollowell

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

Official Fiscal Research Division Publication

DATE: May 23, 2006

Signed Copy Located in the NCGA Principal Clerk's Offices

Attachment

REGISTRATION REQUIREMENT FOR CERTAIN OFFENDERS

I acknowledge that the Division of Motor Vehicles has notified me that, pursuant to N.C. General Statute § 14-208.7, any person who has been convicted in any state of an offense against a minor or a sexually violent offense as defined in N.C. General Statute § 14-208.6 is required to register with the sheriff of the county where the person resides within 10 days of establishing residence in this state, or whenever the person has been present in this state for 15 days, whichever comes first. I certify, under penalty of perjury, that I understand my requirement to register if I have been convicted of an offense that requires registration as a sex offender.

Any person convicted of any of the above-referenced offenses must report to the Sheriff in their county of residence for a specific determination as to their requirement to register.

_____
(Date)

_____
(Print Full Name)

_____
(Signature of Applicant)

Document 1 of 1

Source:
Michie's North Carolina Primary Law/General Statutes of North Carolina/Chapter 20. Motor Vehicles. /ARTICLE 2. Uniform Driver's License Act. /§ 20-25. Right of appeal to court.

§ 20-25. Right of appeal to court.

Any person denied a license or whose license has been canceled, suspended or revoked by the Division, except where such cancellation is mandatory under the provisions of this Article, shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district in which the violation was committed, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation or revocation of license under the provisions of this Article. Provided, a judge of the district court shall have limited jurisdiction under this section to sign and enter a temporary restraining order only.

(1935, c. 52, s. 19; 1975, c. 716, s. 5; 1987, c. 659, s. 1.)

CASE NOTES

Power to Suspend or Revoke Licenses Vested Exclusively in Department (now Division) of Motor Vehicles. - By Session Laws 1941, c. 36 (G.S. 20-1, 20-2, 20-3 and 20-4), the power to suspend or revoke drivers' licenses after July 1, 1941, vested exclusively in the newly created Department (now Division) of Motor Vehicles, subject to the same right of review by the superior court as existed prior to that date. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944).

Section Construed with G.S. 20-23. - This section and G.S. 20-23 must be construed in pari materia. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

A license to operate a motor vehicle is a privilege in the nature of a right of which the licensee may not be deprived save in the manner and upon the conditions prescribed by statute. These, under express provisions of this section, include full de novo review by a superior court judge, at the election of the licensee, in all cases except where the suspension or revocation is mandatory. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968).

Provisions Satisfy Requirements of Due Process. - The provisions of G.S. 20-48, together with the provisions of G.S. 20-16(d), relating to the right of review, and the provisions of this section, relating to the right of appeal, satisfy the requirements of procedural due process. State v. Teasley, 9 N.C. App. 477, 176 S.E.2d 838, appeal dismissed, 277 N.C. 459, 177 S.E.2d 900 (1970); State v. Atwood, 27 N.C. App. 445, 219 S.E.2d 521 (1975), rev'd on other grounds, 290 N.C. 266, 225 S.E.2d 543 (1976).

This section creates no right to appeal a suspension under G.S. 20-4.20(b). The General Assembly simply has not yet provided for appeals from suspension under G.S. 20-4.20(b). Palmer v. Wilkins, 73 N.C. App. 171, 325 S.E.2d 697 (1985).

A petitioner seeking judicial review of a decision of the North Carolina Driver License Medical Review Board must file such petition in the superior court of Wake County pursuant to former G.S. 150A-45 and may not obtain a hearing under the present section in the superior court of the county in which he resides. Cox v. Miller, 26 N.C. App. 749, 217 S.E.2d 198 (1975).

Certiorari to Review Mandatory Suspension. - Petitioner whose driving privilege was mandatorily

suspended under G.S. 20-17(2) and G.S. 20-19(e) did not have the right to appeal under this section or under the Administrative Procedure Act, Chapter 150B. However, the superior court could review the actions of the Commissioner by issuing a writ of certiorari. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

Where petitioner, seeking conditional restoration of his driving privileges, pled sufficient facts to show he did not have right to appeal from final decision of DMV, he could then have petitioned for writ of certiorari to have case reviewed by superior court. Thus, superior court had jurisdiction to review case. Penuel v. Hiatt, 100 N.C. App. 268, 396 S.E.2d 85 (1990).

Discretionary suspensions and revocations of driving licenses by the department (now Division) of Motor Vehicles are reviewable under this section. State v. Cooper, 224 N.C. 100, 29 S.E.2d 18 (1944); In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Trial court correctly reviewed the North Carolina Division of Motor Vehicles' cancellation of a driver's conditionally restored driving privileges under a petition for writ of certiorari rather than de novo review because although there was no right to appeal a cancellation or revocation under G.S. 20-25, the driver could seek certiorari pursuant to G.S. 20-19(e). Cole v. Faulkner, 155 N.C. App. 592, 573 S.E.2d 614 (2002).

Discretionary revocations and suspensions may be reviewed by the court under this section, while mandatory revocations and suspensions may not. Underwood v. Howland, 274 N.C. 473, 164 S.E.2d 2 (1968); Taylor v. Garrett, 7 N.C. App. 473, 173 S.E.2d 31 (1970).

Discretionary revocation of a driver's license is reviewable under the provisions of this section but mandatory revocations are not. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969).

By Trial De Novo. - All suspensions, cancellations and revocations of driving licenses made in the discretion of the Department (now Division) of Motor Vehicles, whether under G.S. 20-16, 20-23 or any other provision of this Chapter, are reviewable by trial de novo. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

The hearing in the superior court is de novo, and the court is not bound by the findings of fact or the conclusions of law made by the Department (now Division). In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954).

Upon the filing of a petition for review, it is the duty of the judge, after notice to the Department (now Division), "to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license or is subject to suspension, cancellation, or revocation of license under the provisions of this Article." This is more than a review as upon a writ of certiorari. It is a rehearing de novo, and the judge is not bound by the findings of fact or the conclusions of law made by the Department (now Division). Else why "take testimony," "examine into the facts," and "determine" the question at issue? Parks v. Howland, 4 N.C. App. 197, 166 S.E.2d 701 (1969).

Any person whose driver's license has been suspended under G.S. 20-16.2(d) has the right to a full de novo review by a superior court judge. This means the court must hear the matter on its merits from beginning to end as if no trial or hearing had been held by the Department (now Division) and without any presumption in favor of its decision. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

Section 20-25 creates no right to appeal a revocation under G.S. 20-138.5, since G.S. 20-138.5 appears in Article 3 rather than Article 2. Following a conviction for habitual impaired driving, under that section, permanent revocation is mandatory and the trial court lacks the authority to provide relief. Cooke v. Faulkner, 137 N.C. App. 755, 529 S.E.2d 512 (2000).

But mandatory revocations under § 20-17 are not reviewable. And no right accrues to a licensee who petitions for a review of the order of the Department (now Division) when it acts under the terms of G.S. 20-17, for then its action is mandatory. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948); Winesett v. Scheidt, 239 N.C. 190, 79 S.E.2d 501 (1954); Fox v. Scheidt, 241 N.C. 31, 84 S.E.2d 259 (1954); Mintz v. Scheidt, 241 N.C. 268, 84 S.E.2d 882 (1954).

There is no right of judicial review when the revocation is mandatory pursuant to the provisions of G.S. 20-17. In re Austin, 5 N.C. App. 575, 169 S.E.2d 20 (1969); Rhyne v. Garrett, 18 N.C. App. 565, 197 S.E.2d 235 (1973).

Mandatory Revocation Was Not Reviewable under § 150B-43. - Where revocation issued by Division of Motor Vehicles (DMV) was mandatory, superior court did not have jurisdiction to review order of revocation pursuant to G.S. 150B-43 as licenses issued under Chapter 20 are expressly excluded under G.S. 150B-2. Davis v. Hiatt, 326 N.C. 462, 390 S.E.2d 338 (1990).

The jurisdiction vested by this section is not a delegation of legislative and administrative authority. The review is judicial and is governed by the standards and guides which are applicable to other judicial proceedings. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Such jurisdiction is not the limited, inherent power of courts to review the discretionary acts of an administrative officer. The power is conferred by statute, and the statute must be looked to in order to ascertain the nature and extent of the review contemplated by the legislature. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

The Section Imposes Additional Jurisdiction. - The court has inherent authority to review the discretionary action of an administrative agency whenever such action affects personal or property rights, upon a prima facie showing, by petition for a writ of certiorari, that such agency has acted arbitrarily, capriciously, or in disregard of law. This section dispenses with the necessity of an application for writ of certiorari, provides for direct approach to the courts and enlarges the scope of the hearing. That the legislature had full authority to impose this additional jurisdiction upon the courts is beyond question. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

But no discretionary power is conferred upon the court in reviewing the suspension or revocation of driving licenses, and the court may determine only if, upon the facts, petitioner's license is subject to suspension or revocation under the provisions of the statute. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

On appeal and hearing de novo in the superior court, that court is not vested with discretionary authority. It makes judicial review of the facts, and if it finds that the license of petitioner is in fact and in law subject to suspension or revocation, the order of the Department (now Division) must be affirmed; otherwise not. In re Donnelly, 260 N.C. 375, 132 S.E.2d 904 (1963); Smith v. Walsh, 34 N.C. App. 287, 238 S.E.2d 157 (1977).

No discretionary power is conferred upon the court in matters pertaining to the revocation of licenses. If, under the facts found by the judge, the statute requires the suspension or revocation of petitioner's license, the order of the Department (now Division) entered in conformity with the facts found must be affirmed. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

And failure of the section to provide standards for the guidance of the courts does not invalidate it or negate the jurisdiction. In re Wright, 228 N.C. 584, 46 S.E.2d 696 (1948).

Remedy for Improper Deprivation of License. - If an individual has been improperly deprived of his license by the Department (now Division) of Motor Vehicles due to a mistake of law or fact, his remedy is to apply for a hearing as provided by G.S. 20-16(d), or by application to the superior court as permitted by this section. At a hearing held pursuant to either of these sections, he would be permitted to show that the suspension was erroneous. He could not ignore the quasi-judicial determination made by the Department (now Division). Beaver v. Scheidt, 251 N.C. 671, 111 S.E.2d 881 (1960).

Hearing by Division Is Prerequisite to Court Review. - Section 20-16(d) provides for a rehearing by the Department (now Division) of Motor Vehicles upon application of a licensee whose license has been suspended, and this procedure should be followed and should be made to appear in the petition before review by the superior court. In re Wright, 228 N.C. 301, 45 S.E.2d 370 (1947).

Errors in Administrative Proceedings Are Rendered Harmless by Hearing De Novo. - If any errors were committed in the administrative proceedings, they are rendered harmless by the hearing de novo on appeal. Joyner v. Garrett, 279 N.C. 226, 182 S.E.2d 553 (1971).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1871
PROPOSED COMMITTEE SUBSTITUTE H1871-PCS70768-RI-22

Short Title: Sex Offender/Out of State Registry/DMV Check. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT REQUIRES REGISTRATION AS A SEX OFFENDER MUST ALSO REGISTER IN NORTH CAROLINA; TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO PROVIDE NOTICE OF SEX OFFENDER REGISTRATION REQUIREMENTS TO APPLICANTS FOR A DRIVERS LICENSE, LEARNER'S PERMIT, INSTRUCTION PERMIT, OR IDENTIFICATION CARD; AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO SEARCH THE NATIONAL SEX OFFENDER PUBLIC REGISTRY FOR AN APPLICANT'S NAME BEFORE ISSUING EITHER A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD.

The General Assembly of North Carolina enacts:

SECTION 1. 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), (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.

e. A final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state."

SECTION 2. Article 2 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-9.3. Notification of requirements for sex offender registration.**

The Division shall provide notice to each person who applies for the issuance of a drivers license, learner's permit, or instruction permit to operate a motor vehicle, and to each person who applies for an identification card, that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes."

SECTION 3. G.S. 20-9 is amended by adding a new subsection to read:

"(i) The Division shall not issue a drivers license to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a drivers license to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a drivers license but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a drivers license, then the Division shall issue the drivers license but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex

Offender Public Registry, the person is in violation of G.S. 20-30, and the Division shall immediately revoke the drivers license and shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a license or whose license has been revoked by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a license under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-30."

SECTION 4. G.S. 20-37.7 is amended by adding a new subsection to read:

"(b1) Search National Sex Offender Public Registry. – The Division shall not issue a special identification card to an applicant from another state until the Division has searched the National Sex Offender Public Registry to determine if the person is currently registered as a sex offender in another state.

(1) If the Division finds that the person is currently registered as a sex offender in another state, the Division shall not issue a special identification card to the person until the person submits proof of registration pursuant to Article 27A of Chapter 14 of the General Statutes issued by the sheriff of the county where the person resides.

(2) If the person does not appear on the National Sex Offender Public Registry, the Division shall issue a special identification card but shall require the person to sign an affidavit acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes.

(3) If the Division is unable to access all states' information contained in the National Sex Offender Public Registry, but the person is otherwise qualified to obtain a special identification card, then the Division shall issue the card but shall first require the person to sign an affidavit stating that: (i) the person does not appear on the National Sex Offender Public Registry and (ii) acknowledging that the person has been notified that if the person is a sex offender, then the person is required to register pursuant to Article 27A of Chapter 14 of the General Statutes. The Division shall search the National Sex Offender Public Registry for the person within a reasonable time after access to the Registry is restored. If the person does appear in the National Sex Offender Public Registry, the person is in violation of G.S. 20-37.8,

and the Division shall promptly notify the sheriff of the county where the person resides of the offense.

(4) Any person denied a special identification card by the Division pursuant to this subsection shall have a right to file a petition within 30 days thereafter for a hearing in the matter in the superior court of the county wherein such person shall reside, or to the resident judge of the district or judge holding the court of that district, or special or emergency judge holding a court in such district, and such court or judge is hereby vested with jurisdiction and it shall be its or his duty to set the matter for hearing upon 30 days' written notice to the Division, and thereupon to take testimony and examine into the facts of the case, and to determine whether the petitioner is entitled to a special identification card under the provisions of this subsection and whether the petitioner is in violation of G.S. 20-37.8."

SECTION 5. G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) At the time a person registers, the sheriff with whom the person registered shall provide written proof of registration to the person."

SECTION 6. This act becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date.

reported out 6/7/06

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1871 A BILL TO BE ENTITLED AN ACT TO PROVIDE THAT A PERSON CONVICTED OF AN OFFENSE IN ANOTHER STATE THAT REQUIRES REGISTRATION AS A SEX OFFENDER MUST ALSO REGISTER IN NORTH CAROLINA AND TO REQUIRE THE DIVISION OF MOTOR VEHICLES TO CHECK THE NATIONAL SEX OFFENDER PUBLIC REGISTRY FOR AN APPLICANT'S NAME BEFORE ISSUING EITHER A DRIVERS LICENSE OR SPECIAL IDENTIFICATION CARD.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1902

Short Title:	GPS Monitoring of Some Sex Offenders/Funds.	(Public)
Sponsors:	Representatives Ray, Goforth, Glazier, Farmer-Butterfield (Primary Sponsors); B. Allen, L. Allen, Blust, Brown, Capps, Clary, Coates, Dollar, England, Faison, Fisher, Frye, Goodwin, Grady, Harrison, Hilton, Hollo, Holloway, Howard, Johnson, Ed Jones, Lewis, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Stiller, Sutton, Underhill, Vinson, Weiss, Wiley, and Wray.	
Referred to:	Judiciary IV, if favorable, Appropriations.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACTIVE GPS MONITORING OF ANY SEX OFFENDER WHO REQUIRES THE HIGHEST LEVEL OF SUPERVISION AND MONITORING IF THE OFFENDER IS RELEASED ON PROBATION, PAROLE, OR POST-RELEASE SUPERVISION FOR THE SUPERVISORY PERIOD OF THAT PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AND TO APPROPRIATE FUNDS TO IMPLEMENT THE GPS MONITORING SYSTEM, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-1343(b2) reads as rewritten:

"(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.

(7) Submit to electronic monitoring as provided in G.S. 15A-1380.6, if the defendant is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S.14-208.6.

(8) Submit to electronic monitoring as provided in G.S. 15A-1380.6, if the defendant is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, has committed an offense involving the physical, mental, or sexual abuse of a minor, and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring.

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

SECTION 2. G.S. 15A-1343(c2) reads as rewritten:

"(c2) Electronic Monitoring Device Fee. – Any person placed on house arrest with electronic monitoring under subsection (b1) of this section or who has electronic monitoring imposed as a condition of probation under subsection (b2) of this section and G.S. 15A-1380.6 shall pay a fee of ninety dollars ($90.00) for the electronic monitoring device. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on house arrest with electronic ~~monitoring.~~ monitoring or upon motion of the person who has electronic monitoring imposed as a condition of probation under subsection (b2) of this section and G.S. 15A-1380.6. 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 those methods if the officer is authorized by subsection (g) of this section to determine the payment schedule. The fee 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."

SECTION 3. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Electronic Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who violates probation satisfies the criteria in either subdivision (1) or (2) of this subsection, and if

the court extends the probation as a result of the violation, then the court shall order electronic monitoring as a condition of the extended probation. The electronic monitoring system used shall comply with the provisions of G.S. 15A-1380.6. Electronic monitoring shall be required if the defendant:

(1) Is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S.14-208.6; or

(2) Is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, has committed an offense involving the physical, mental, or sexual abuse of a minor, and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring."

SECTION 4. G.S. 15A-1368.4 is amended by adding a new subsection to read:

"(b2) Mandatory Electronic Monitoring for Certain Other Sex Offenders. – In addition to the other required conditions set forth in this section, the Commission shall also impose electronic monitoring as a condition for a supervisee who satisfies the criteria set out in either subdivision (1) or (2) of this subsection. The electronic monitoring system used shall comply with the provisions of G.S. 15A-1380.6. Electronic monitoring shall be required if the defendant:

(1) Is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the person is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S.14-208.6; or

(2) Is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, has committed an offense involving the physical, mental, or sexual abuse of a minor, and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring."

SECTION 5. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 85C.

"Electronic Monitoring Devices.

"**§ 15A-1380.6. Electronic monitoring devices.**

(a) If electronic monitoring is imposed as a condition of probation, parole, or post-release supervision on an offender described in subsection (b) of this section, the Department of Correction shall use an electronic monitoring system that actively monitors the offender, identifies the offender's location, and timely reports or records the offender's presence near or within a crime scene or in a prohibited area or the offender's departure from specified geographical areas. If an electronic monitoring system that actively monitors the offender will not work as provided by this section,

then the Department of Correction shall use a passive electronic system that works within the technological or geographical limitations.

(b) An electronic monitoring system as described in subsection (a) of this section shall be used to monitor any of the following offenders who are placed on probation, parole, or post-release supervision and who have electronic monitoring imposed as a condition of that probation, parole, or post-release supervision:

(1) The defendant is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the person is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S.14-208.6.

(2) The defendant is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, has committed an offense involving the physical, mental, or sexual abuse of a minor, and the Department of Correction, based on the Department's risk assessment program, recommends that the defendant submit to the highest possible level of supervision and monitoring."

SECTION 6. The Department of Correction shall issue a Request for Proposal (RFP) for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision and who are identified by the Department of Correction as requiring the highest possible level of supervision and monitoring. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued in an appropriate amount of time for contract terms to begin January 1, 2007.

SECTION 7. There is appropriated from the General Fund to the Department of Correction the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307,218) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act to supervise up to 300 sex offenders.

SECTION 8. Section 7 of this act becomes effective July 1, 2006. The remainder of this act becomes effective January 1, 2007, and applies to offenders placed on probation, parole, or post-release supervision on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1902
PROPOSED COMMITTEE SUBSTITUTE H1902-CSSVf-68 [v.3]

5/31/2006 9:25:55 PM

Short Title: GPS Monitoring of Some Sex Offenders/Funds. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACTIVE GPS MONITORING OF ANY SEX OFFENDER WHO REQUIRES THE HIGHEST LEVEL OF SUPERVISION AND MONITORING IF THE OFFENDER IS RELEASED ON PROBATION, PAROLE, OR POST-RELEASE SUPERVISION FOR THE SUPERVISORY PERIOD OF THAT PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AND TO APPROPRIATE FUNDS TO IMPLEMENT THE GPS MONITORING SYSTEM, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor two categories of offenders as follows:

(1) Any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6.

(2) Any offender who satisfies all of the following criteria: (i) is convicted of a reportable conviction as defined by G.S. 14-208.6(4), (ii) is required to register under Part 2 of Article 27A of Chapter 14 of the General Statutes, (iii) has committed an offense involving the physical, mental, or sexual abuse of a minor, and (iv) the Department of Correction has recommended, based on the Department's Division of Community Corrections sex offender risk assessment program, that the offender requires the highest possible level of supervision and monitoring.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"**§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

Any person who is described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2) and who is placed on probation, parole, or post-release supervision, shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of probation, parole, or post-release supervision.

"**§ 14-208.35. Fees.**

(a) There shall be a onetime fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. 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 those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be remitted quarterly to the Department.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision 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."

SECTION 2. G.S. 15A-1343(b2) reads as rewritten:

"(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.
(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2).

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

SECTION 3. G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring For Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.33(a)(1)."

SECTION 4. G.S. 15A-1343.2(f) is amended by adding a new subdivision to read:

"(5) Submit to electronic monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.33(a)(2)."

SECTION 5. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is in the category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2) violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 6. G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. –
In addition to the required condition set forth in subsection (b) of this section, ~~for~~ a supervisee 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, ~~controlling conditions, violations of which may result in revocation of post-release supervision, are:~~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 Commission.
(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 a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is in the category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2)."

SECTION 7. G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is in a category described by G.S. 14-208.33(a)(1) or G.S. 14-208.33(a)(2), the Commission shall require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 8. The Department of Correction shall issue a Request for Proposal (RFP) for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision and who are identified by the Department of Correction as requiring the highest possible level of supervision and monitoring. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued in an appropriate amount of time for contract terms to begin January 1, 2007.

SECTION 9. There is appropriated from the General Fund to the Department of Correction the sum of one million three hundred seven thousand two hundred eighteen dollars ($1,307,218) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act to supervise up to 300 sex offenders.

SECTION 10. Section 9 of this act becomes effective July 1, 2006. The remainder of this act becomes effective January 1, 2007, and applies to offenders placed on probation, parole, or post-release supervision on or after that date.

HOUSE BILL 1902:
GPS Monitoring of Some Sex Offenders/Funds

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 1, 2006
Introduced by:	Reps. Ray, Goforth, Glazier, Farmer-Butterfield	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition H1902-CSSVf-68		

SUMMARY: House Bill 1902 would require Global Positioning Satellite monitoring of the most serious and intermediate sex offenders for the period of their probation, parole, or post-release supervision. The bill appropriates $1.3 million to the Department of Correction to implement this system. This bill is a recommendation of the House Select Committee on Sex Offender Registration Laws. The PCS makes only technical and stylistic changes.

CURRENT LAW: Under current law, a sex offender, as a condition of probation, parole, or post-release supervision, may be placed under house arrest with electronic monitoring. With this system, an offender is required to wear an ankle bracelet, and the Division can track when the offender leaves or arrives at his residence. The Division is not able to track where an offender goes, but only whether the offender has left or returned. A person placed under electronic monitoring pays a $90 fee for the device.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1902 authorizes the Department of Correction to establish a sex offender monitoring program using a satellite-based monitoring system to monitor two types of offenders:

1. Offenders who are convicted of a reportable conviction and who are required to register under the Sexually Violent Predator Registration Program (lifetime registry) because they are classified as a sexually violent predator, a recidivist, or have been convicted of an aggravated offense.

2. Offenders who are convicted of a reportable conviction, who are required to register under the Sex Offender and Public Protection Registration Program (10-year registry), who have committed an offense involving the physical, mental, or sexual abuse of a minor, and the Department has recommended, based on the Division of Community Corrections sex offender risk assessment program, that the offender requires the highest level of supervision and monitoring.

The enrollment in the GPS monitoring program would be mandatory for these two groups of offenders and would extend for the period of supervision, whether that supervision is probation, parole, or post-release supervision. GPS monitoring would also be required as a condition of extended probation for offenders who violate their probation. The offender would be subject to active monitoring, unless an active program will not work due to geographic or technological limitations, in which case passive monitoring will be used.

There is a onetime $90 fee assessed to each person required to enroll in the program. The court may exempt a person from paying the fee only for good cause and upon motion of the offender.

The bill appropriates $1.3 million dollars to implement this satellite-based monitoring system and to supervise up to 300 sex offenders.

EFFECTIVE DATE: The appropriation would become effective July 1, 2006. The remainder of the act would become effective January 1, 2007, and apply to offenders placed on probation or post-release supervision on or after that date.

BACKGROUND: Global Positioning Systems (GPS) is a collection of satellites owned by the United States Government that provides highly accurate worldwide positioning and navigation information 24 hours a day. GPS receivers on the earth's surface communicate with satellites to determine the precise location, speed, and direction of assigned transmitting devices. There are two types of GPS monitoring: active and passive. Active GPS monitoring means that an offender's movement is tracked and recorded frequently throughout the day. This information is uploaded to the monitoring company through the use of cell phone technology on a scheduled basis, usually every 5 to 10 minutes. Supervising agents are alerted almost immediately if an offender is non-compliant. Passive GPS operates in a similar manner, but the location and movement is uploaded when the offender returns home and places the devise in a cradle that connects to the monitoring company. Violation information is forwarded from the monitoring company to the corrections agency via phone or email.

Thirteen states allow global positioning systems to track sex offenders: California, Florida, Indiana, Louisiana, Massachusetts, Missouri, Montana, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, and Wisconsin.

In 2002, the Division of Community Corrections (DCC) received a grant from the Governor's Crime Commission to conduct a pilot using GPS to enhance the supervision of the most serious and intermediate sex offenders. The pilot ended in September 2004, providing approximately a 15-month period of review. DCC concluded that "the technology, while not a panacea to all aspects of offender supervision could be very useful as an enhancement to supervision."[1]

On February 6, 2006, the Speaker of the House of Representatives established the House Select Committee on Sex Offender Registration to study the sex offender registration laws. In connection with this study, the Committee was directed to identify methods that can be used to track sex offender locations, including the use of GPS devices. At its second meeting, the Committee heard a presentation from the Division of Community Corrections regarding the GPS pilot program. Subsequently, the Committee recommended the proposal contained in House Bill 1902.

H1902e1-SMSV-CSSVf-68

[1] Legislative Report on Global Positioning Satellite Systems; Division of Community Corrections (March 1, 2006).

Definitions

Aggravated offense - Any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

Recidivist – A person who has a prior conviction for an offense requiring registration.

Sexually violent predator - A person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

ATTACHMENT
HB-1902

American Civil Liberties Union of North Carolina

P. O. Box 28004, Raleigh, NC 27611-8004
Phone: (919) 834-3466 Fax: (919) 828-3265 Email: aclunc@nc.rr.com

Statement in Opposition to House Bill 1902;
GPS Monitoring of Some Sex Offenders/Funds

To: Rep. Ray; Rep. Goforth; Rep. Farmer-Butterfield
CC: Rep. Weiss; Rep. Kiser; Rep. Daughtry; Rep. Earle; Rep. Halloway; Rep. Justus; Rep. Martin; Rep. Parmon; Rep. Spear
From: Jennifer Rudinger, Executive Director
Rebekah Goncarovs, Legislative Clerk
Date: May 31, 2006

The ACLU-NC opposes H. 1902 because it is ineffective as a deterrent, could actually increase the recidivism rate by making it more difficult for former offenders to successfully rehabilitate and become productive members of society, and will consume much-needed law enforcement resources that would be better used in prevention, rehabilitation and education.

- GPS monitoring will be ineffective in deterring sex offenders and preventing sex crimes. An article written in The North Carolina Conservative notes that a monitoring system cannot prevent crimes. *Tracking Sex Offenders*, The North Carolina Conservative, May 5, 2006, available at http://www.northcarolinaconservative.com/index.php?subaction=showfull&id=1146844890&archive=&start_from=&ucat=&. Though the offender's location would be actively monitored, it would not be until after the crime was reported that his or her presence nearby would become suspicious. Furthermore, offenders already know that their fingerprints and mug shots are on file making them easier to identify but this does not deter an individual who is determined to reoffend.
- GPS monitoring of sex offenders consumes law enforcement resources. Law enforcement officials in Seattle fear the effects of the recent passage of a similar bill in Washington will leave them "inundated with false alarms." Jason McBride, *GPS monitoring of sex offenders urged*, Seattle P.I., Jan. 20, 2006, at 1. The North Carolina Conservative article, previously mentioned, noted that violation alerts could occur simply because the offender has entered an area where a signal gets dropped (large buildings, moving cars or wooded areas), and each of these alerts "must be reviewed and the supervising officer must decide whether or not to respond." *Tracking Sex Offenders*, The North Carolina Conservative, May 5, 2006, at http://www.northcarolinaconservative.com/index.php?subaction=showfull&id=1146844890&archive=&start_from=&ucat=&. GPS monitoring requires valuable resources to become dedicated to investigating numerous false alarms.
- GPS monitoring is expensive and ineffective. According to *Tracking Sex Offenders*, "active GPS costs approximately $9 per offender per day, or about

$3,300 a year." This money would better be used to enhance other programs that successfully reduce crime.

- GPS monitoring creates a false sense of security. This bill is being passed because individuals feel unsafe about the current sex offender laws. Without understanding the ineffectiveness of GPS monitoring, parents may ignore precautions they should be taking and instead rely on law enforcement to be able to monitor sex offenders through GPS systems.
- GPS monitoring may lead to more false arrests, allowing the culpable parties to escape prosecution. Because offenders may be identified by GPS as being near a crime scene, it is likely that law enforcement will have tunnel vision and will focus their investigation solely on a former offender even if that person did not commit the crime.
- Having to wear the GPS device will make it more difficult for offenders to successfully rehabilitate and to become productive members of society. To the extent that the device may be visible, offenders forced to wear such devices will have a hard time securing employment, renting an apartment, or even going shopping for groceries because of the reaction they may get from people who see the box and immediately perceive them as a threat. Since it is in everyone's best interest to promote successful rehabilitation and reduce the likelihood of recidivism, the device required to be worn by H. 1902 is counterproductive to that important goal.

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

JUNE 1, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Cartner	NC Bar Association
Carrie Randa	NCCASA
Tony Spence	DOT/DMV
Dirk Taylor	NCATL
Holly Bryan	NCATL
Kevin Leonard	DCSR
Gary Robertson	AP
Suzanne Rucker	NCFRW
Martha Jenkins	NCFRW
Jan Burns	Cary NC
Alyn Berry	Civitas Institute

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

JUNE 1, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Greg McLeod	NCAGO
Meredith Bishop	NCAGO
Ashby Ray	NCAGO
Jerry Ratley	SBI/DOJ
CHRIS BATTISTA	SBI
Jami ~~Fitzgerald~~	NCFPC
Robert Lee Guy	DCC/DOC
Roz Savitt	NC CCA
Kim Howes	PCANC
Cally Wiggins	Gov. office
Jeff Wolfe	Daily Bulletin

VISITOR REGISTRATION SHEET

JUDICIARY IV — 1-JUNE-2006

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Manisha Devasthali	N/A
Ryan Presley	Rep. Glazier

House Pages

Name Of Committee: JUDICIARY II Date: 1-JUNE-2006

1. Name: STEPHEN STROUSE
   County: WAYNE
   Sponsor: REP. SAULS
2. Name: AARON BOYD
   County: McDOWELL
   Sponsor: REP. GILLESPIE
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: JAMES UNRUH
2. Name: JERRY PERRY
3. Name: FRED HINES
4. Name: _____
5. Name: _____

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, June 6, 2006

The House Committee on Judiciary IV met on Tuesday, June 6, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray, Tim Spear and staff attorneys Trina Griffin, Steve Rose and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

The first bill heard, House Bill 1902 – GPS MONITORING OF SOME SEX OFFENDERS/FUNDS was carried over from the June 1st meeting. After discussion of the bill in the last meeting, the bill sponsors requested a new PCS come before the Committee. Representative Parmon moved to adopt the new Proposed Committee Substitute for discussion. The motion was adopted. Trina Griffin, staff attorney, briefly explained the differences in the new PCS and the previous PCS. The differences are: a requirement of active monitoring in Tier 1 offenders during the time they are enrolled in the program while under probation, parole and supervision; a change in the way the fees are remitted; and a reduction in the appropriations due to the removal of Tier 2 from $1.3 million for 300 offenders to $771,000 for 100 offenders. Mr. Robert Guy, Department of Corrections, answered questions from the members. After discussion, Representative Glazier moved to give a favorable report to the PCS, unfavorable to the original bill and to re-refer to the Committee on Finance and then to the Committee on Appropriations. The motion was adopted.

The next bill to be heard was HB 2195 – LIABILITY PROTECTION FOR STATE MED ASST TEAMS. Representative Justus moved to adopt the PCS before the Committee for discussion purposes. The motion was adopted. Vice-Chair Glazier, a sponsor, spoke on the bill. He stated that the bill came from a unanimous bipartisan recommendation from the sub-committee on Public Health and Bioterrorism of the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery. Discussion followed with Mr. Drexdal Pratt, Chief, Office of Emergency Medical Services, NC DHHS, Division of Facility Services, answering questions from the members. Representative Glazier submitted a technical amendment to change the title of the bill. (See Attachment) Vice-Chair Kiser moved to adopt the amendment. The amendment was adopted. Chairman Weiss said the bill, as written under current law, refers to Worker's Compensation Law, and she asked for a clarification to be sure that with the change in title there is no problem. Mr. Rose, staff attorney, stated that the bill was not intended to cover Worker's Compensation and, as the actual body of the bill was written, does not change anything regarding Worker's Compensation. Representative Spear moved that the amendment be rolled into a new committee substitute and that the committee substitute be given a favorable report; unfavorable to the original bill. The motion was adopted.

Chairman Weiss stated that discussion would begin on HB 1896 – SEX OFFENDER REGISTRATION CHANGES, and that a Proposed Committee Substitute was being distributed. HB 1896 is a recommendation that came out of the Study Commission that the sponsors, Representatives Goforth, Ray, Glazier and Farmer-Butterfield worked on. Representative Justus moved that the PCS be adopted for discussion purposes. The motion was adopted. The bill was explained by Trina Griffin, staff attorney. Discussion followed with questions on registry,

residency, the definition of "sexual contact", the reason for excluding parks and playgrounds in Section 11 and effective dates of the various sections of the bill. Chairman Weiss announced that the Committee would resume discussion of HB 1896 at the next meeting, to be held on June 8th.

The meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; HB 1902: Copy of Bill, Proposed Committee Substitute, Bill Analysis; Definitions, Committee Substitute, Committee Report; HB 2195: Copy of Bill, Proposed Committee Substitute, Amendment, Bill Analysis, Committee Substitute, Committee Report; HB 1896: Copy of Bill, Proposed Committee Substitute, Bill Analysis, Visitor Registration.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, June 6, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 1902 - GPS MONITORING OF SOME SEX OFFENDERS/FUNDS
Representative Ray

HB 2195 - LIABILITY PROTECTION FOR STATE MED ASST TEAMS.
Representatives Cunningham and Glazier

HB 1896 - SEX OFFENDER REGISTRATION CHANGES
Representatives Goforth, Ray, Glazier, and Farmer-Butterfield

ADJOURNMENT

HOUSE BILL 1896:
Sex Offender Registration Changes

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 6, 2006
Introduced by:	Reps. Goforth, Ray, Glazier, Farmer-Butterfield	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to Second Edition H1896-CSSV-67		

SUMMARY: The Proposed Committee Substitute for House Bill 1896 does the following:

- ***Adds statutory rape of a person who is 13, 14, or 15 years old by a person who is at least six years older to the list of offenses that require sex offender registration.***
- ***Requires in-person registration, annual verification, and notification of changes in address or in academic or employment status.***
- ***Requires notice, in person or by telephone, to the sheriff in the offender's county of registration when the offender will be working for a certain period of time in another county. The bill would further require email notification of the offender's presence, employment address, and any temporary address to the sheriff in the county in which the offender will be working.***
- ***Provides an offender with earlier notice of his obligation to verify his registration information.***
- ***Requires the sheriff to take a photograph of the offender when the offender returns his verification form.***
- ***Authorizes the sheriff to require a person to verify his information more frequently than otherwise required if the sheriff has reasonable grounds to believe the registration information is inaccurate.***
- ***Adds a "willful" requirement to the criminal penalties for failure to comply with the registration requirements.***
- ***Authorizes the district attorney to petition the court to extend an offender's registration for a period not to exceed 10 years for willful failure to comply with registration requirements.***
- ***Prohibits a registered sex offender from residing within 1,000 feet of a public, private, or parochial school, a child care center, or a public swimming pool. The bill would grandfather offenders who have established a residence prior to December 1, 2006. It also provides that changes in the ownership or use of property that occur after an offender establishes residency shall not be the basis for a violation of the residency restrictions.***
- ***Expands the definition of 'sexual contact' to include ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.***
- ***Requires the Department of Correction to study mental health treatment programs for incarcerated offenders and report back to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services.***

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kellie Visker	AARP
Mary Bethel	AARP NC
Karen Gottlieb	NC Sentencing Commission
John Madler	"
Gail Stotzberger	ACLU
Larry Dix	DJJDP
David Carter	NC BAR Assoc.
Barbara Cansler	BSEGR

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Selena Berrier	NC Child Fatality Task Force
Caroline Reinke	Action for Children
Jeff Wolfe	Daily Bulletin
Jennie New	Kennedy Covington
Cally Wiggins	Gov's office
Martha McConnell	Carolinas HealthCare System
Dr. Brent Pratt	NC Office of EMS
Holli Hoffman	NC Office of EMS
Mildred Spearman	NCDOC
Tim Moose	NC DOC
Robert Lee Guy	DCC/DOC
Guy Richard	NC AOC

6/6/06
Not final

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1902
PROPOSED COMMITTEE SUBSTITUTE H1902-CSSVf-71 [v.2]

6/6/2006 8:32:40 AM

Short Title: GPS Monitoring of Some Sex Offenders/Funds. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACTIVE GPS MONITORING FOR THE SUPERVISORY PERIOD OF PROBATION, PAROLE, OR POST-RELEASE SUPERVISION OF ANY SEX OFFENDER REQUIRED TO REGISTER ON THE LIFETIME SEX OFFENDER REGISTRY BECAUSE THE OFFENDER IS CLASSIFIED AS A SEXUALLY VIOLENT PREDATOR, A RECIDIVIST, OR AN AGGRAVATED OFFENDER, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE GPS MONITORING SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"**§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

Any person who is convicted of a reportable conviction as defined by G.S. 14-208.6(4), who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, and who is placed on probation, parole, or post-release supervision, shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of probation, parole, or post-release supervision.

"**§ 14-208.35. Fees.**

(a) There shall be a onetime fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. 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 those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be transmitted to the State for deposit into the State's General Fund.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision 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."

SECTION 2. G.S. 15A-1343(b2) reads as rewritten:

"(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.

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.34.

SECTION 3. G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring For Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.34."

SECTION 4. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is described by G.S. 14-208.34 violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 5. G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. –

In addition to the required condition set forth in subsection (b) of this section, ~~for~~ a supervisee 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, ~~controlling conditions, violations of which may result in revocation of post-release supervision, are:~~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 Commission.

(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 a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is described by G.S. 14-208.34."

SECTION 6. G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is described by G.S. 14-208.34, the Commission shall require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 7. G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. –
In addition to the required condition set forth in subsection (b) of this section, ~~for~~ a supervisee 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, ~~controlling conditions, violations of which may result in revocation of post-release supervision, are:~~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 Commission.

(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 a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is described by G.S. 14-208.34."

SECTION 8. The Department of Correction shall issue a Request for Proposal (RFP) for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued in an appropriate amount of time for contract terms to begin January 1, 2007.

SECTION 9. There is appropriated from the General Fund to the Department of Correction the sum of seven hundred seventy one thousand five hundred thirty-nine dollars ($771,539) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act to supervise up to 100 sex offenders.

SECTION 10. Section 9 of this act becomes effective July 1, 2006. The remainder of this act becomes effective January 1, 2007, and applies to offenders placed on probation, parole, or post-release supervision on or after that date.

HOUSE BILL 1902:
GPS Monitoring of Some Sex Offenders/Funds

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 1, 2006
Introduced by:	Reps. Ray, Goforth, Glazier, Farmer-Butterfield	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to First Edition H1902-CSSVf-68		

SUMMARY: ***House Bill 1902 would require Global Positioning Satellite monitoring of the most serious and intermediate sex offenders for the period of their probation, parole, or post-release supervision. The bill appropriates $1.3 million to the Department of Correction to implement this system. This bill is a recommendation of the House Select Committee on Sex Offender Registration Laws. The PCS makes only technical and stylistic changes.***

CURRENT LAW: Under current law, a sex offender, as a condition of probation, parole, or post-release supervision, may be placed under house arrest with electronic monitoring. With this system, an offender is required to wear an ankle bracelet, and the Division can track when the offender leaves or arrives at his residence. The Division is not able to track where an offender goes, but only whether the offender has left or returned. A person placed under electronic monitoring pays a $90 fee for the device.

BILL ANALYSIS: The Proposed Committee Substitute for House Bill 1902 authorizes the Department of Correction to establish a sex offender monitoring program using a satellite-based monitoring system to monitor two types of offenders:

1. Offenders who are convicted of a reportable conviction and who are required to register under the Sexually Violent Predator Registration Program (lifetime registry) because they are classified as a sexually violent predator, a recidivist, or have been convicted of an aggravated offense.

2. Offenders who are convicted of a reportable conviction, who are required to register under the Sex Offender and Public Protection Registration Program (10-year registry), who have committed an offense involving the physical, mental, or sexual abuse of a minor, and the Department has recommended, based on the Division of Community Corrections sex offender risk assessment program, that the offender requires the highest level of supervision and monitoring.

The enrollment in the GPS monitoring program would be mandatory for these two groups of offenders and would extend for the period of supervision, whether that supervision is probation, parole, or post-release supervision. GPS monitoring would also be required as a condition of extended probation for offenders who violate their probation. The offender would be subject to active monitoring, unless an active program will not work due to geographic or technological limitations, in which case passive monitoring will be used.

There is a onetime $90 fee assessed to each person required to enroll in the program. The court may exempt a person from paying the fee only for good cause and upon motion of the offender.

The bill appropriates $1.3 million dollars to implement this satellite-based monitoring system and to supervise up to 300 sex offenders.

EFFECTIVE DATE: The appropriation would become effective July 1, 2006. The remainder of the act would become effective January 1, 2007, and apply to offenders placed on probation or post-release supervision on or after that date.

BACKGROUND: Global Positioning Systems (GPS) is a collection of satellites owned by the United States Government that provides highly accurate worldwide positioning and navigation information 24 hours a day. GPS receivers on the earth's surface communicate with satellites to determine the precise location, speed, and direction of assigned transmitting devices. There are two types of GPS monitoring: active and passive. Active GPS monitoring means that an offender's movement is tracked and recorded frequently throughout the day. This information is uploaded to the monitoring company through the use of cell phone technology on a scheduled basis, usually every 5 to 10 minutes. Supervising agents are alerted almost immediately if an offender is non-compliant. Passive GPS operates in a similar manner, but the location and movement is uploaded when the offender returns home and places the devise in a cradle that connects to the monitoring company. Violation information is forwarded from the monitoring company to the corrections agency via phone or email.

Thirteen states allow global positioning systems to track sex offenders: California, Florida, Indiana, Louisiana, Massachusetts, Missouri, Montana, New Jersey, Ohio, Oklahoma, South Carolina, Tennessee, and Wisconsin.

In 2002, the Division of Community Corrections (DCC) received a grant from the Governor's Crime Commission to conduct a pilot using GPS to enhance the supervision of the most serious and intermediate sex offenders. The pilot ended in September 2004, providing approximately a 15-month period of review. DCC concluded that "the technology, while not a panacea to all aspects of offender supervision could be very useful as an enhancement to supervision."[1]

On February 6, 2006, the Speaker of the House of Representatives established the House Select Committee on Sex Offender Registration to study the sex offender registration laws. In connection with this study, the Committee was directed to identify methods that can be used to track sex offender locations, including the use of GPS devices. At its second meeting, the Committee heard a presentation from the Division of Community Corrections regarding the GPS pilot program. Subsequently, the Committee recommended the proposal contained in House Bill 1902.

H1902e1-SMSV-CSSVf-68

[1] Legislative Report on Global Positioning Satellite Systems, Division of Community Corrections (March 1, 2006).

Definitions

Aggravated offense - Any criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

Recidivist – A person who has a prior conviction for an offense requiring registration.

Sexually violent predator - A person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in sexually violent offenses directed at strangers or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1902
PROPOSED COMMITTEE SUBSTITUTE H1902-PCS50725-SVf-71

Short Title: GPS Monitoring of Some Sex Offenders/Funds. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REQUIRE ACTIVE GPS MONITORING FOR THE SUPERVISORY PERIOD OF PROBATION, PAROLE, OR POST-RELEASE SUPERVISION OF ANY SEX OFFENDER REQUIRED TO REGISTER ON THE LIFETIME SEX OFFENDER REGISTRY BECAUSE THE OFFENDER IS CLASSIFIED AS A SEXUALLY VIOLENT PREDATOR, A RECIDIVIST, OR AN AGGRAVATED OFFENDER, AND TO APPROPRIATE FUNDS TO IMPLEMENT THE GPS MONITORING SYSTEM.

The General Assembly of North Carolina enacts:

SECTION 1. Article 27A of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 5. Sex Offender Monitoring.

"**§ 14-208.33. Establishment of program; creation of guidelines; duties.**

(a) The Department of Correction shall establish a sex offender monitoring program that uses a continuous satellite-based monitoring system and shall create guidelines to govern the program. The program shall be designed to monitor any offender who is convicted of a reportable conviction as defined by G.S. 14-208.6(4) and who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6.

(b) In developing the guidelines for the program, the Department shall require that any offender who is enrolled in the satellite-based program submit to an active continuous satellite-based monitoring program, unless an active program will not work as provided by this section. If the Department determines that an active program will not work as provided by this section, then the Department shall require that the defendant submit to a passive continuous satellite-based program that works within the technological or geographical limitations.

(c) The satellite-based monitoring program shall use a system that provides all of the following:

(1) Time-correlated and continuous tracking of the geographic location of the subject using a global positioning system based on satellite and other location tracking technology.

(2) Reporting of subject's violations of prescriptive and proscriptive schedule or location requirements. Frequency of reporting may range from once a day (passive) to near real-time (active).

(d) The Department may contract with a single vendor for the hardware services needed to monitor subject offenders and correlate their movements to reported crime incidents. The contract may provide for services necessary to implement or facilitate any of the provisions of this Part.

"**§ 14-208.34. Enrollment in satellite-based monitoring programs mandatory; length of enrollment.**

Any person who is convicted of a reportable conviction as defined by G.S. 14-208.6(4), who is required to register under Part 3 of Article 27A of Chapter 14 of the General Statutes because the defendant is classified as a sexually violent predator, is a recidivist, or was convicted of an aggravated offense as those terms are defined in G.S. 14-208.6, and who is placed on probation, parole, or post-release supervision, shall enroll in a satellite-based monitoring program with the Division of Community Corrections office in the county where the person resides. The person shall remain enrolled in the satellite-based monitoring program for the period of probation, parole, or post-release supervision.

"**§ 14-208.35. Fees.**

(a) There shall be a onetime fee of ninety dollars ($90.00) assessed to each person required to enroll pursuant to this Part. The court may exempt a person from paying the fee only for good cause and upon motion of the person placed on satellite-based monitoring. 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 those methods if the officer is authorized by subsection (c) of this section to determine the payment schedule. This fee is intended to offset only the costs associated with the time-correlated tracking of the geographic location of subjects using the location tracking crime correlation system.

(b) The fee shall be payable to the clerk of superior court, and the fees shall be transmitted to the State for deposit into the State's General Fund.

(c) If a person placed on supervised probation, parole, or post-release supervision is required as a condition of that probation, parole, or post-release supervision 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."

SECTION 2. G.S. 15A-1343(b2) reads as rewritten:

"(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.

(7) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the defendant is described by G.S. 14-208.34."

SECTION 3. G.S. 15A-1343.2 is amended by adding a new subsection to read:

"(f1) Mandatory Condition of Satellite-Based Monitoring for Some Sex Offenders. – Notwithstanding any other provision of this section, the court shall impose satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of probation on any offender who is described by G.S. 14-208.34."

SECTION 4. G.S. 15A-1344 is amended by adding a new subsection to read:

"(e2) Mandatory Satellite-Based Monitoring Required for Extension of Probation in Response to Violation by Certain Sex Offenders. – If a defendant who is described by G.S. 14-208.34 violates probation and if the court extends the probation as a result of the violation, then the court shall order satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes as a condition of the extended probation."

SECTION 5. G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, ~~for~~ a supervisee 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,

~~controlling conditions, violations of which may result in revocation of post-release supervision, are:~~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 Commission.

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

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(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 a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is described by G.S. 14-208.34."

SECTION 6. G.S. 15A-1374 is amended by adding a new subsection to read:

"(b1) Mandatory Satellite-Based Monitoring Required as Condition of Parole for Certain Offenders. – If a parolee is described by G.S. 14-208.34, the Commission shall require as a condition of parole that the parolee submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes."

SECTION 7. G.S. 15A-1368.4 (b1) reads as rewritten:

"(b1) Additional Required Conditions for Sex Offenders and Persons Convicted of Offenses Involving Physical, Mental, or Sexual Abuse of a Minor. – In addition to the required condition set forth in subsection (b) of this section, ~~for~~ a supervisee 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, ~~controlling conditions, violations of which may result in revocation of post-release supervision, are:~~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 Commission.

(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 a court of competent jurisdiction expressly finds that it is unlikely that the defendant's harmful or abusive conduct will recur and that it would be in the child's best interest to allow the supervisee to reside in the same household with a minor child.

(6) Submit to satellite-based monitoring pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes, if the offense is a reportable conviction as defined by G.S. 14-208.6(4) and the supervisee is described by G.S. 14-208.34."

SECTION 8. The Department of Correction shall issue a Request for Proposal (RFP) for passive and active Global Positioning Systems for use as an intermediate sanction and to help supervise certain sex offenders who are placed on probation, parole, or post-release supervision. The RFP shall require separate bids: one for equipment, maintenance, and technical support, and one for the aforementioned items plus monitoring services.

No less than 30 days prior to issuing these RFPs, the Department shall provide the Fiscal Research Division with copies of the draft RFPs. The RFPs shall be issued in an appropriate amount of time for contract terms to begin January 1, 2007.

SECTION 9. There is appropriated from the General Fund to the Department of Correction the sum of seven hundred seventy-one thousand five hundred thirty-nine dollars ($771,539) for the 2006-2007 fiscal year to implement the active and passive electronic monitoring systems required by this act to supervise up to 100 sex offenders.

SECTION 10. Section 9 of this act becomes effective July 1, 2006. The remainder of this act becomes effective January 1, 2007, and applies to offenders placed on probation, parole, or post-release supervision on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 1902 A BILL TO BE ENTITLED AN ACT TO REQUIRE ACTIVE GPS MONITORING OF ANY SEX OFFENDER WHO REQUIRES THE HIGHEST LEVEL OF SUPERVISION AND MONITORING IF THE OFFENDER IS RELEASED ON PROBATION, PAROLE, OR POST-RELEASE SUPERVISION FOR THE SUPERVISORY PERIOD OF THAT PROBATION, PAROLE, OR POST-RELEASE SUPERVISION AND TO APPROPRIATE FUNDS TO IMPLEMENT THE GPS MONITORING SYSTEM, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2195*

Short Title:	Liability Protection for State Med Asst Teams.	(Public)
Sponsors:	Representatives Cunningham, Glazier (Primary Sponsors); Coleman, Goforth, Harrison, Insko, Lucas, McAllister, Rapp, Underhill, Wainwright, and Wray.	
Referred to:	Rules, Calendar, and Operations of the House.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION AND WORKERS' COMPENSATION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"**§ 166A-14. Immunity and exemption.**

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~ the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include ~~a~~ any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~ the person would ordinarily possess if performing ~~his~~ duties in the State, or political subdivision thereof in which normally employed or rendering services."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2195*
PROPOSED COMMITTEE SUBSTITUTE H2195-CSRL-48 [v.2]

6/5/2006 4:05:23 PM

Short Title: Liability Protection for State Med Asst Teams. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION AND WORKERS' COMPENSATION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"**§ 166A-14. Immunity and exemption.**

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, ~~nor~~ and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~ the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other

states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include ~~a~~ any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~ the person would ordinarily possess if performing ~~his~~ duties in the State, or political subdivision thereof in which normally employed or rendering services."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. PCS

H. B. No. 2195 DATE _____

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

COMMITTEE SUBSTITUTE ✓

Rep.)
Sen.) _____

moves to amend the bill on page 1, lines 2 and 3

(X) WHICH CHANGES THE TITLE

by deleting the words "AND WORKERS' COMPENSATION".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 2195:
Liability Protection for State Med Asst Teams

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 5, 2006
Introduced by:	Reps. Cunningham, Glazier	**Summary by:**	Steven Rose
Version:	PCS to First Edition H2195-CSRL-48 [v.2]		Committee Counsel

SUMMARY: ***The PCS for HB 2195 adds health care workers performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the NC Office of Emergency Medical Services to the definition of "emergency management worker" for the purposes of G.S. 166A-14, thus providing immunity from liability for related personal injuries and property damage and protecting their rights to receive various benefits, including those provided under the Workers' Compensation Law.***

CURRENT LAW: Health care workers working as members of State Medical Assistance Teams are not now specifically covered under the definition of "emergency management worker" in G.S. 166A-14. This provision is part of the North Carolina Emergency Management Act of 1977.

EFFECTIVE DATE: When it becomes law.

BACKGROUND: This bill was recommended by the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery in its Interim Report of May 2006.

H2195e1-SMRL-CSRL

Reported out 6/6/06

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2195*
PROPOSED COMMITTEE SUBSTITUTE H2195-PCS50726-RL-50

Short Title: Liability Protection for State Med Asst Teams. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO PROVIDE LIABILITY PROTECTION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 166A-14 reads as rewritten:

"**§ 166A-14. Immunity and exemption.**

(a) All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the State nor any political subdivision thereof, nor, except in cases of willful misconduct, gross negligence or bad faith, any emergency management worker complying with or reasonably attempting to comply with this Article or any order, rule or regulation promulgated pursuant to the provisions of this Article or pursuant to any ordinance relating to any emergency management measures enacted by any political subdivision of the State, shall be liable for the death of or injury to persons, or for damage to property as a result of any such activity.

(b) The rights of any person to receive benefits to which ~~he~~ the person would otherwise be entitled under this Article or under the Workers' Compensation Law or under any pension law, ~~nor~~and the right of any such person to receive any benefits or compensation under any act of Congress shall not be affected by performance of emergency management functions.

(c) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency management worker who shall, in the course of performing ~~his~~ the worker's duties as such, practice such professional, mechanical or other skill during a state of disaster.

(d) As used in this section, the term "emergency management worker" shall include any full or part-time paid, volunteer or auxiliary employee of this State or other

states, territories, possessions or the District of Columbia, of the federal government or any neighboring country or of any political subdivision thereof or of any agency or organization performing emergency management services at any place in this State, subject to the order or control of or pursuant to a request of the State government or any political subdivision thereof. The term "emergency management worker" under this section shall also include ~~a~~ any health care worker performing health care services as a member of a hospital-based or county-based State Medical Assistance Team designated by the North Carolina Office of Emergency Medical Services and any person performing emergency health care services under G.S. 90-12.2.

(e) Any emergency management worker, as defined in this section, performing emergency management services at any place in this State pursuant to agreements, compacts or arrangements for mutual aid and assistance to which the State or a political subdivision thereof is a party, shall possess the same powers, duties, immunities and privileges ~~he~~ the person would ordinarily possess if performing ~~his~~ duties in the State, or political subdivision thereof in which normally employed or rendering services."

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 2195 A BILL TO BE ENTITLED AN ACT TO PROVIDE LIABILITY PROTECTION AND WORKERS' COMPENSATION FOR HEALTH CARE WORKERS WHEN RESPONDING TO IN-STATE INCIDENTS OUTSIDE THEIR HOSPITAL OR NORMAL JURISDICTION AS MEMBERS OF A STATE MEDICAL ASSISTANCE TEAM.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 1896
Corrected Copy 5/17/06

Short Title:	Sex Offender Registration Changes.	(Public)
Sponsors:	Representatives Goforth, Ray, Glazier, Farmer-Butterfield (Primary Sponsors); B. Allen, L. Allen, Brown, Clary, Coates, England, Faison, Fisher, Frye, Grady, Harrison, Hilton, Holloway, Hollo, Ed Jones, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Stiller, Sutton, Underhill, Vinson, Weiss, Wiley, and Wray.	
Referred to:	Judiciary IV.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation

or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10 year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(a2) A person required to register pursuant to subsection (a) of this section and who is employed or carries on a vocation in a county in the State other than the county in which the person resides, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, shall maintain registration with the sheriff of the county where the person works. In addition to the information required under subsection (b) of this section, the person shall

also provide information regarding the person's place of employment and the person's address in his or her county of residence."

SECTION 4.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) No fee shall be required to register when a person first registers as required under this section. After the initial registration required for an offense or offenses, a registrant shall pay a civil fee of one hundred dollars ($100.00) annually to the sheriff with whom the person is registered. If a registrant's county of registration changes prior to the annual due date of the fee, the registrant shall pay the fee at the time of registration in the new county and then annually thereafter. The fee shall be retained by the sheriff and shall be used by the sheriff for the administration of this Article. Inability to pay the required fee shall not relieve the person from the requirement to register pursuant to this section. Collection of unpaid fees shall be through civil process."

SECTION 5.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date.

SECTION 6.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(e) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, he or she shall report in person to the sheriff of the new county as well as the sheriff of the county from which the person had last registered not later than the tenth day after moving to the new county and provide written notice of the new address. ~~the~~ When the Division receives information that a person is moving from one county to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. The person shall report in person to provide the written notice. Upon receipt of the notice, the sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 7.(b) This section becomes effective December 1, 2006.

SECTION 8.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

(a) The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the ~~person.~~person and shall also notify the sheriff of the county of the offender's last reported address that the verification form has been mailed.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) The person shall include a current photograph of himself or herself with the verification form. The photograph must be easy to view and must provide a true and accurate likeness of the offender. If, in the sheriff's discretion, the photograph does not satisfy that criterion then the sheriff may take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the

sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) A sheriff may require that a person verify his or her information in the sex offender registry more frequently than required by this Article. A sheriff may also require that a person provide an updated photograph of himself or herself, if, in the sheriff's discretion, the current photograph is difficult to view or no longer provides a true and accurate likeness of the person. If the person refuses to provide a photograph, then the sheriff may take a photograph of the person to be included with the person's registration information."

SECTION 8.(b) This section becomes effective December 1, 2006.

SECTION 9.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education."

SECTION 9.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Termination of registration requirement.**

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has complied with the provisions of this Article during the 10-year registration period and the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(c) If a person failed to comply with the provisions of this Article during the 10-year registration period, the District Attorney in the jurisdiction in which the person resides or the Attorney General may petition the court not to terminate the registration requirement and to require the person to continue to maintain registration under the provisions of this Article for an additional 10-years. If the court finds that the person has

willfully failed to comply with the provisions of this Article during the 10-year registration period, the court may grant the petition not to terminate the registration and shall enter an order requiring the person to continue to maintain the registration requirements for an additional period of 10 years."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential and work restrictions.**

(a) A person required to register under this Part, or Part 2 of this Article, shall not knowingly reside or work within 1,000 feet of the property on which any public school, private or parochial school, licensed day care center, any other child care facility, public swimming pool, or private swimming pool is located.

(b) As used in this section, 'school' does not include institutions of higher education.

(c) As used in this section, 'private swimming pool' does not include swimming pools located at a private residence.

(d) This section does not apply to licensed day care centers or other child care facilities that are located on, or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(e) Changes in the ownership or use of a person or entity that occupies property within 1,000 feet of a registrant's registered address, which occur after a registrant establishes residency or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section. For purposes of this subsection, residency is established when the registrant purchases the residency or enters into a written lease contract for the residency.

(f) Violation of this section is a Class F Felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. This section does not apply to persons who have established a residence prior to the effective date of this act by purchasing the residency or entering into a written lease contract for the residency. Residences established through a written lease contract prior to the effective date of this act may not be continued beyond the definite period of time specified in the lease at its execution.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(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.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. This act is effective when it becomes law.

6/6/06

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1896
Corrected Copy 5/17/06
PROPOSED COMMITTEE SUBSTITUTE H1896-CSSV-67 [v.7]

6/5/2006 4:24:40 PM

Short Title: Sex Offender Registration Changes. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) Part 2 of Article 27A of Chapter 14 is amended by adding a new section to read:

"**§ 14-208.8A. Notification requirement for out-of-county employment.**

(a) Notice Required. – A person required to register under G.S. 14-208.7 and who is employed or carries on a vocation in a county in the State other than the county in which the person resides, on a part-time or full-time basis, with or without compensation or government or educational benefit, and maintains a temporary residence in that county for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, shall notify, in person or by telephone, the sheriff of the county where the person resides of the out-of-county employment. The person shall provide the sheriff information regarding the person's place of employment and the temporary address.

(b) Time Period. – The notice required by subsection (a) of this section shall be provided within 48 hours after the person knows or should know that he or she will be

working and maintaining a temporary residence in a county other than the county in which the person resides for more than 10 business days within a 30-day period, or within 10 days after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for an aggregate period exceeding 30 days in a calendar year.

(c) Notice to Out-of-County Sheriff. – Upon receiving the notice required under subsection (a) of this section, the sheriff shall immediately forward the information to the Division of Criminal Information. Based on the information provided by the sheriff, the Department of Justice shall provide email notification through its Sex Offender Watch program to the sheriff of the county where the person is or will be working. The email notification shall contain information about the person's place of employment and temporary address in that county."

SECTION 4.(b) This section becomes effective June 1, 2007.

SECTION 5.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) In-Person Registration Required. – Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 5.(b) This section becomes effective December 1, 2006.

SECTION 6.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) In-State Address Change. – If a person required to register changes ~~address,~~ address within the same county, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of ~~the county with whom the person had last registered.~~ that county. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, ~~the~~ he or she shall report in person to the sheriff of the new county and provide written notice of the new address. The person shall also provide written notice of the new address to the sheriff of the county from which the person had last registered not later than the tenth day after moving to the new county. When the Division receives information that a person is moving from one county to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) Out-of-State Address Change. – If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. The person shall report in person to provide the written notice. Upon receipt of the notice, the sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) Change of Academic Status. – If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) Change of Employment Status. – If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

(a) Annual Verification. – The information in the county registry shall be verified annually for each registrant as follows:

(1) ~~Every year on~~ Thirty days prior to the anniversary of a person's initial registration date, the Division shall annually mail a nonforwardable verification form to the last reported address of the ~~person.~~person and shall also notify the sheriff of the county of the offender's last reported address that the verification form has been mailed.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) At the time the person returns the verification form, the sheriff shall take a photograph of the registrant to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the

person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) More Frequent Verification May Be Required. – A sheriff may require that a person verify his or her information in the sex offender registry more frequently than required by this Article if the sheriff has reasonable grounds to believe the information maintained by the sheriff is no longer accurate."

SECTION 7.(b) This section becomes effective December 1, 2006.

SECTION 8.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

SECTION 8.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 9.(a) G.S. 14-208.11(a), as amended by Section 9 of this act, is amended by adding a new subdivision to read:

"(7) Fails to notify the registering sheriff of out-of-county employment as required under G.S. 14-208.8A."

SECTION 9.(b) This section becomes effective June 1, 2007, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Termination of registration requirement.**

(a) Automatic Termination. – The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has complied with the provisions of this Article during the 10-year registration period and the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) Maintain Registration Until Registration Requirement Complete. – If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(c) Extension of Registration for Willful Failure to Comply. – If a person willfully failed to comply with the provisions of this Article during the 10-year registration period, the District Attorney in the jurisdiction in which the person resides may petition the court not to terminate the registration requirement and to require the

person to continue to maintain registration under the provisions of this Article for a period not to exceed 10 years. If the court finds that the person has willfully failed to comply with the provisions of this Article during the 10-year registration period, the court may grant the petition not to terminate the registration and shall enter an order requiring the person to continue to maintain the registration requirements for a period not to exceed 10 years."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential restrictions.**

(a) A person required to register under this Part, or Part 3 of this Article, shall not knowingly reside within 1,000 feet of the property on which any public school, private or parochial school, child care center, or public swimming pool is located.

(b) As used in this section, 'school' does not include institutions of higher education.

(c) This section does not apply to child care centers that are located on, or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(d) Changes in the ownership of or use of property within 1,000 feet of a registrant's registered address that occur after a registrant establishes residency shall not form the basis for finding that an offender is in violation of the residence restrictions of this section. For purposes of this subsection, residency is established when the registrant purchases the residency or enters into a written lease contract for the residency.

(e) Violation of this section is a Class F Felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. This section does not apply to persons who have established a residence prior to the effective date of this section by purchasing the residency or entering into a written lease contract for the residency. Residences established through a written lease contract prior to the effective date of this act may not be continued beyond the definite period of time specified in the lease at its execution.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(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.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 14. The Department of Correction shall study and develop a plan for offering mental health treatment for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department shall study appropriate and effective mental health treatment techniques and alternatives. Services must be best practices, as determined by the Department. The Department will consult various stakeholders from organizations dedicated to the prevention of sexual assault, victims' advocacy organizations, and experts in the field of treatment of sexual offenders.. The Department shall consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than January 15, 2007, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and the General Assembly on or before October 1, 2007.

SECTION 15. Except as otherwise provided in this act, this act is effective when it becomes law.

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, June 08, 2006

The House Committee on Judiciary IV met on Thursday, June 8, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Leo Daughtry, Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray and Tim Spear and staff attorneys Trina Griffin, Jennifer McGinnis and Steve Rose. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss announced that discussion on HB 1896 – SEX OFFENDER REGISTRATION CHANGES begun at the last meeting would continue. A new proposed committee substitute was distributed. Trina Griffin, staff attorney, called attention to the changes and stated that the changes are not substantive. Representative Kiser raised the question of duplication of surveillance of offenders; Representative Spear stated that he did not want sheriffs to get an unfunded mandate to track offenders. Questions were raised on residency restrictions and if a motel room would be considered a temporary residence if a sex offender was working outside his home county. Ms. Jill Shotzberger, ACLU, stated that the ACLU has concern with residency restrictions as they relate to living close to a child care facility. She stated that the term is vague and excludes a large part of urban areas and some portions of more rural counties; if sex offenders aren't allowed to live within those areas, they won't register. When they are not registered, the DOC and Sheriff's Department has more difficulty locating those who are a threat The ACLU wants to encourage compliance with the registry but not discourage non-compliance by placing greater burden on those who are forced to live outside a certain area. The question was asked if a sex offender has a contract to purchase a house but has not closed; can that contract be voided? A principle in the Law of Equity says that a real estate contract that is valid is enforceable by the court; the buyer already constructively owns the property. It is an issue that needs to be looked at further. It was pointed out that offenders, before being released from custody, would be advised of the parameters they are to follow and that some burden should be put on the offender. Discussion on these questions followed.

Vice-Chair Glazier was asked to preside when Chairman Weiss presented a "harboring" amendment. See Attached Amendment #1.) Representative Daughtry moved for adoption of the amendment. Following discussion, the amendment was adopted.

Representative Spear moved to amend the bill (See Attached Amendment #2). Representative Daughtry moved to adopt the amendment. The motion was adopted.

After discussion on the validity of an enforceable real estate contract for purchase, that it constitutes residency, Representative Daughtry moved adoption. The motion was adopted.

Representative Ray moved for a favorable report for the PCS , with amendments rolled into a new committee sub, title reflecting the bill, unfavorable to the original.

Representative Spear raised the matter of definition of residence as it applies to a motel room; there is no provision in the bill that defines a motel room as being inclusive in the bill. He sent forth an amendment to include " hotels, motels and other transient lodging places".

Representative Ray's motion was withdrawn so the amendment from Representative Spear could come forth. Representative Ray moved for adoption of the motion. The motion was adopted.

Representative Ray's previous motion to roll the amendments into a committee substitute and that the committee substitute for HB 1896 be given a favorable report, with a title change to reflect the bill, unfavorable to the original bill.

There being no further business, the meeting was adjourned at 10:55 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda; HB 1896: Copy of Bill, Proposed Committee Substitute, Bill Analysis, Amendments #1, #2, #3, and #4, Committee Substitute, Committee Report; HB 2060: Copy of Bill, Bill Analysis, Handout from NC Department of Crime Control & Public Safety, Visitor Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, June 8, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 1896 - SEX OFFENDER REGISTRATION CHANGES.
Representatives Goforth, Ray, Glazier, Farmer-Butterfield

HB 2060 - VICTIM'S COMPENSATION CHANGES
Representatives Haire and Kiser

ADJOURNMENT

HOUSE BILL 1896:
Sex Offender Registration Changes

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 6, 2006
Introduced by:	Reps. Goforth, Ray, Glazier, Farmer-Butterfield	**Summary by:**	Trina Griffin Committee Counsel
Version:	PCS to Second Edition H1896-CSSV-67		

SUMMARY: The Proposed Committee Substitute for House Bill 1896 does the following:

- *Adds statutory rape of a person who is 13, 14, or 15 years old by a person who is at least six years older to the list of offenses that require sex offender registration.*
- *Requires in-person registration, annual verification, and notification of changes in address or in academic or employment status.*
- *Requires notice, in person or by telephone, to the sheriff in the offender's county of registration when the offender will be working for a certain period of time in another county. The bill would further require email notification of the offender's presence, employment address, and any temporary address to the sheriff in the county in which the offender will be working.*
- *Provides an offender with earlier notice of his obligation to verify his registration information.*
- *Requires the sheriff to take a photograph of the offender when the offender returns his verification form.*
- *Authorizes the sheriff to require a person to verify his information more frequently than otherwise required if the sheriff has reasonable grounds to believe the registration information is inaccurate.*
- *Adds a "willful" requirement to the criminal penalties for failure to comply with the registration requirements.*
- *Authorizes the district attorney to petition the court to extend an offender's registration for a period not to exceed 10 years for willful failure to comply with registration requirements.*
- *Prohibits a registered sex offender from residing within 1,000 feet of a public, private, or parochial school, a child care center, or a public swimming pool. The bill would grandfather offenders who have established a residence prior to December 1, 2006. It also provides that changes in the ownership or use of property that occur after an offender establishes residency shall not be the basis for a violation of the residency restrictions.*
- *Expands the definition of 'sexual contact' to include ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.*
- *Requires the Department of Correction to study mental health treatment programs for incarcerated offenders and report back to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services.*

Attachment #
Weiss

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1896

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

H1896-ARL-19 [v.1]

Date _____,2006

Comm. Sub. [NO]
Amends Title [NO]
H1896-CSSV-67

Representative _____

moves to amend the bill on page 5, lines 39-40, by inserting the following new section between those lines:

"**SECTION 9.1.(a)** Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) Any person who has reason to believe that an offender required to register under this Article is not complying, or has not complied with the requirements of this Article and who, with the intent to assist the offender in eluding a law enforcement agency that is seeking to find the offender to question the offender about, or to arrest the offender for his or her noncompliance with the requirements of this Article and who does any of the following is guilty of a Class H felony:

(1) Withholds information from, or does not notify, the law enforcement agency about the offender's noncompliance with the requirements of this Article and, if known, the whereabouts of the offender.

(2) Harbors, or attempts to harbor, or assists another person in harboring, or attempting to harbor, the offender.

(3) Conceals, or attempts to conceal, or assist another person in concealing, or attempting to conceal, the offender.

(4) Provides information to the law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 9.1.(b) This section becomes effective December 1, 2006 and applies to offenses committed on or after that date."

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1896

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

H1896-ARL-19 [v.1]

1

SIGNED Jennifer Weiss
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

Attachment #2

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

(Rep.) Glazier
Sen.)

1 moves to amend the bill on page 5, line 15

2 ( ) WHICH CHANGES THE TITLE

3 by adding after the period:

4 ~~For~~ "A person who willfully fails to

5 comply with the provisions of this subsection

6 is guilty of a Class ~~1~~ misdemeanor."

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SIGNED Timothy K Spear

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

Attachment #3

EDITION No. 1896

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Daughtry
)
Sen.)

moves to amend the bill on page 6, line 34

( ) WHICH CHANGES THE TITLE

by Inserting the following language after the period;

"For the purposes of this sub section, a registrant is considered to have purchased the residency if they have entered into a specifically enforceable contract to purchase the residency."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

Attachment #4

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1896 DATE 6/8/06

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

COMMITTEE SUBSTITUTE ✓

Rep.) Spear
Sen.)

moves to amend the bill on page 2, line 37

( ) WHICH CHANGES THE TITLE

by inserting between the words "residence" and "if" the following phrase:

"including hotels, motels, and other transient lodging places,

SIGNED _____

ADOPTED ✓ FAILED _____ TABLED _____

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

reported out 6/12/06

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☐ Committee Substitute for

HB 1896 A BILL TO BE ENTITLED AN ACT TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 1896
Corrected Copy 5/17/06

Short Title:	Sex Offender Registration Changes.	(Public)
Sponsors:	Representatives Goforth, Ray, Glazier, Farmer-Butterfield (Primary Sponsors); B. Allen, L. Allen, Brown, Clary, Coates, England, Faison, Fisher, Frye, Grady, Harrison, Hilton, Holloway, Hollo, Ed Jones, Luebke, McGee, Moore, Pate, Preston, Rapp, Setzer, Sherrill, Starnes, Steen, Stiller, Sutton, Underhill, Vinson, Weiss, Wiley, and Wray.	
Referred to:	Judiciary IV.	

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS, AS RECOMMENDED BY THE HOUSE SELECT COMMITTEE ON SEX OFFENDER REGISTRATION LAWS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A (statutory rape or sexual offense of person who is 13, 14, or 15 years old), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation

or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10 year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(a2) A person required to register pursuant to subsection (a) of this section and who is employed or carries on a vocation in a county in the State other than the county in which the person resides, on a part-time or full-time basis, with or without compensation or government or educational benefit, for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, shall maintain registration with the sheriff of the county where the person works. In addition to the information required under subsection (b) of this section, the person shall

also provide information regarding the person's place of employment and the person's address in his or her county of residence."

SECTION 4.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 5.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) No fee shall be required to register when a person first registers as required under this section. After the initial registration required for an offense or offenses, a registrant shall pay a civil fee of one hundred dollars ($100.00) annually to the sheriff with whom the person is registered. If a registrant's county of registration changes prior to the annual due date of the fee, the registrant shall pay the fee at the time of registration in the new county and then annually thereafter. The fee shall be retained by the sheriff and shall be used by the sheriff for the administration of this Article. Inability to pay the required fee shall not relieve the person from the requirement to register pursuant to this section. Collection of unpaid fees shall be through civil process."

SECTION 5.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date.

SECTION 6.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(e) Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) If a person required to register changes address, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of the county with whom the person had last registered. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, he or she shall report in person to the sheriff of the new county as well as the sheriff of the county from which the person had last registered not later than the tenth day after moving to the new county and provide written notice of the new address. ~~the~~ When the Division receives information that a person is moving from one county to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. The person shall report in person to provide the written notice. Upon receipt of the notice, the sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 7.(b) This section becomes effective December 1, 2006.

SECTION 8.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration information.**

(a) The information in the county registry shall be verified annually for each registrant as follows:

(1) Every year on the anniversary of a person's initial registration date, the Division shall mail a nonforwardable verification form to the last reported address of the ~~person.~~person and shall also notify the sheriff of the county of the offender's last reported address that the verification form has been mailed.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) The person shall include a current photograph of himself or herself with the verification form. The photograph must be easy to view and must provide a true and accurate likeness of the offender. If, in the sheriff's discretion, the photograph does not satisfy that criterion then the sheriff may take a photograph of the offender to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the

sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) A sheriff may require that a person verify his or her information in the sex offender registry more frequently than required by this Article. A sheriff may also require that a person provide an updated photograph of himself or herself, if, in the sheriff's discretion, the current photograph is difficult to view or no longer provides a true and accurate likeness of the person. If the person refuses to provide a photograph, then the sheriff may take a photograph of the person to be included with the person's registration information."

SECTION 8.(b) This section becomes effective December 1, 2006.

SECTION 9.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education."

SECTION 9.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Termination of registration requirement.**

(a) The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has complied with the provisions of this Article during the 10-year registration period and the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(c) If a person failed to comply with the provisions of this Article during the 10-year registration period, the District Attorney in the jurisdiction in which the person resides or the Attorney General may petition the court not to terminate the registration requirement and to require the person to continue to maintain registration under the provisions of this Article for an additional 10-years. If the court finds that the person has

willfully failed to comply with the provisions of this Article during the 10-year registration period, the court may grant the petition not to terminate the registration and shall enter an order requiring the person to continue to maintain the registration requirements for an additional period of 10 years."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential and work restrictions.**

(a) A person required to register under this Part, or Part 2 of this Article, shall not knowingly reside or work within 1,000 feet of the property on which any public school, private or parochial school, licensed day care center, any other child care facility, public swimming pool, or private swimming pool is located.

(b) As used in this section, 'school' does not include institutions of higher education.

(c) As used in this section, 'private swimming pool' does not include swimming pools located at a private residence.

(d) This section does not apply to licensed day care centers or other child care facilities that are located on, or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(e) Changes in the ownership or use of a person or entity that occupies property within 1,000 feet of a registrant's registered address, which occur after a registrant establishes residency or accepts employment shall not form the basis for finding that an offender is in violation of the residence restrictions of this section. For purposes of this subsection, residency is established when the registrant purchases the residency or enters into a written lease contract for the residency.

(f) Violation of this section is a Class F Felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. This section does not apply to persons who have established a residence prior to the effective date of this act by purchasing the residency or entering into a written lease contract for the residency. Residences established through a written lease contract prior to the effective date of this act may not be continued beyond the definite period of time specified in the lease at its execution.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(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.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. This act is effective when it becomes law.

6/8/06

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H D

HOUSE BILL 1896
Corrected Copy 5/17/06
PROPOSED COMMITTEE SUBSTITUTE H1896-CSSV-67 [v.11]

6/8/2006 9:15:38 AM

Short Title: Sex Offender Registration Changes. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWS REGARDING THE SEX OFFENDER AND PUBLIC PROTECTION REGISTRATION PROGRAMS AND TO MAKE CHANGES TO OTHER STATUTES REGARDING SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13, 14, or 15 years old where the defendant is at least six years older), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) Part 2 of Article 27A of Chapter 14 is amended by adding a new section to read:

"**§ 14-208.8A. Notification requirement for out-of-county employment if temporary residence established.**

(a) Notice Required. – A person required to register under G.S. 14-208.7 shall notify the sheriff of the county with whom the person is registered of the person's place of employment and temporary residence if the person meets both of the following conditions:

(1) Is employed or carries on a vocation in a county in the State other than the county in which the person is registered for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, on a part-time or full-time basis, with or without compensation or government or educational benefit.

(2) Maintains a temporary residence in that county for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year.

(b) Time Period. – The notice required by subsection (a) of this section shall be provided within 48 hours after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for more than 10 business days within a 30-day period, or within 10 days after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for an aggregate period exceeding 30 days in a calendar year.

(c) Notice to Division. – Upon receiving the notice required under subsection (a) of this section, the sheriff shall immediately forward the information to the Division. The Division shall notify the sheriff of the county where the person is working and maintaining a temporary residence of the person's place of employment and temporary address in that county."

SECTION 4.(b) This section becomes effective June 1, 2007.

SECTION 5.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) In-Person Registration Required. – Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 5.(b) This section becomes effective December 1, 2006.

SECTION 6.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) In-State Address Change. – If a person required to register changes ~~address,~~ address within the same county, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of ~~the county with whom the person had last registered.~~ that county. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, ~~the~~ he or she shall report in person to the sheriff of the new county and provide written notice of the new address. The person shall also provide written notice of the new address to the sheriff of the county from which the person had last registered not later than the tenth day after moving to the new county. When the Division receives information that a person is moving from one county to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) Out-of-State Address Change. – If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. The person shall report in person to provide the written notice. Upon receipt of the notice, the sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the

Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) Change of Academic Status. – If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) Change of Employment Status. – If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9A reads as rewritten:

"§ 14-208.9A. Verification of registration information.

(a) Annual Verification. – The information in the county registry shall be verified annually for each registrant as follows:

(1) ~~Every year on~~ Thirty days prior to the anniversary of a person's initial registration date, the ~~Division~~ shall annually mail a nonforwardable verification form to the last reported address of the ~~person.~~person and shall also notify the sheriff of the county of the offender's last reported address that the verification form has been mailed.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) At the time the person returns the verification form, the sheriff shall take a photograph of the registrant to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is

residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) Additional Verification May Be Required. – During the period that an offender is required to be registered under this Article, the sheriff is authorized to attempt to verify that the offender continues to reside at the address last registered by the offender. If it appears to the sheriff that the current photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, upon in person notice from the sheriff, the sex offender shall allow the sheriff to take another photograph of the sex offender at the time of the sheriff's request. If requested by the sheriff, the sex offender shall appear in person at the sheriff's office during normal business hours within 72 hours of being requested to do so and shall allow the sheriff to take another photograph of the sex offender.

SECTION 7.(b) This section becomes effective December 1, 2006.

SECTION 8.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education.

SECTION 8.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 9.(a) G.S. 14-208.11(a), as amended by Section 9 of this act, is amended by adding a new subdivision to read:

"(7) Fails to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A."

SECTION 9.(b) This section becomes effective June 1, 2007, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Termination of registration requirement.**

(a) Automatic Termination. – The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has complied with the provisions of this Article during the 10-year registration

period and the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) Maintain Registration Until Registration Requirement Complete. – If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(c) Extension of Registration for Willful Failure to Comply. – If a person willfully failed to comply with the provisions of this Article during the 10-year registration period, the District Attorney in the jurisdiction in which the person resides may petition the court not to terminate the registration requirement and to require the person to continue to maintain registration under the provisions of this Article for a period not to exceed 10 years. If the court finds that the person has willfully failed to comply with the provisions of this Article during the 10-year registration period, the court may grant the petition not to terminate the registration and shall enter an order requiring the person to continue to maintain the registration requirements for a period not to exceed 10 years."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential restrictions.**

(a) A person required to register under this Part, or Part 3 of this Article, shall not knowingly reside within 1,000 feet of the property on which any public or nonpublic school, child care center, or public swimming pool is located.

(b) As used in this section, 'school' does not include home schools as defined in G.S. 115C-563 or institutions of higher education.

(c) This section does not apply to child care centers that are located on or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(d) Changes in the ownership of or use of property within 1,000 feet of a registrant's registered address that occur after a registrant establishes residency shall not form the basis for finding that an offender is in violation of the residence restrictions of this section. For purposes of this subsection, residency is established when the registrant purchases the residency or enters into a written lease contract for the residency.

(e) Violation of this section is a Class F Felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. This section does not apply to persons who have established a residence prior to the effective date of this section by purchasing the residency or entering into a written lease contract for the residency. Residences established through a written lease contract prior to the effective date of this act may not be continued beyond the definite period of time specified in the lease at its execution.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(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.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. The Department of Correction shall study and develop a plan for offering mental health treatment for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department shall study appropriate and effective mental health treatment techniques and alternatives. Services must be best practices, as determined by the Department. The Department will consult various stakeholders from organizations dedicated to the prevention of sexual assault, victims' advocacy organizations, and experts in the field of treatment of sexual offenders.. The Department shall consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services no later than January 15, 2007, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities and Substance Abuse Services and the General Assembly on or before October 1, 2007.

SECTION 14. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 15. Except as otherwise provided in this act, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 1896
Corrected Copy 5/17/06
PROPOSED COMMITTEE SUBSTITUTE H1896-PCS30601-SV-67

Short Title: Sex Offender Registration Changes. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO ADD STATUTORY RAPE OF A THIRTEEN-, FOURTEEN-, OR FIFTEEN-YEAR OLD BY A PERSON AT LEAST SIX YEARS OLDER TO THE LIST OF OFFENSES REQUIRING SEX OFFENDER REGISTRATION; TO REQUIRE OFFENDERS TO PROVIDE IN-PERSON REGISTRATION, ANNUAL VERIFICATION, AND NOTIFICATION OF CHANGES; TO REQUIRE NOTIFICATION TO AN OFFENDER'S REGISTERING SHERIFF OF AN OFFENDER'S OUT-OF-COUNTY EMPLOYMENT WHERE A TEMPORARY RESIDENCE IS ESTABLISHED; TO PROVIDE AN OFFENDER OF EARLIER NOTICE OF HIS ANNUAL OBLIGATION TO VERIFY REGISTRATION; TO REQUIRE SHERIFFS TO TAKE PHOTOGRAPHS OF OFFENDERS AT THE TIME OF REGISTRATION; TO AUTHORIZE SHERIFFS TO VERIFY A REGISTRANT'S ADDRESS AND TO UPDATE A REGISTRANT'S PHOTOGRAPH; TO ADD A WILLFUL REQUIREMENT TO THE CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH THE REGISTRATION REQUIREMENTS UNDER G.S. 14-208.11; TO MAKE IT A CLASS H FELONY TO HARBOR OR OTHERWISE AID A SEX OFFENDER WHO IS IN NONCOMPLIANCE WITH THE REGISTRATION REQUIREMENTS; TO AUTHORIZE THE EXTENSION OF THE REGISTRATION PERIOD FOR UP TO TEN YEARS FOR WILLFUL FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS; TO MAKE IT A CLASS F FELONY FOR A SEX OFFENDER TO RESIDE WITHIN ONE THOUSAND FEET OF A PUBLIC OR NONPUBLIC SCHOOL, A CHILD CARE CENTER, OR A PUBLIC SWIMMING POOL; TO EXPAND THE DEFINITION OF 'SEXUAL CONTACT' AS IT RELATES TO THE OFFENSE OF SEXUAL BATTERY; AND TO AUTHORIZE THE DEPARTMENT OF CORRECTION TO

STUDY THE MENTAL HEALTH TREATMENT PRACTICES OF SEX OFFENDERS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-208.6(5) reads as rewritten:

"(5) 'Sexually violent offense' means a violation of G.S. 14-27.2 (first degree rape), G.S. 14-27.3 (second degree rape), G.S. 14-27.4 (first degree sexual offense), G.S. 14-27.5 (second degree sexual offense), G.S. 14-27.5A (sexual battery), G.S. 14-27.6 (attempted rape or sexual offense), G.S. 14-27.7 (intercourse and sexual offense with certain victims), G.S. 14-27.7A(a) (statutory rape or sexual offense of person who is 13-, 14-, or 15-years-old where the defendant is at least six years older), G.S. 14-178 (incest between near relatives), G.S. 14-190.6 (employing or permitting minor to assist in offenses against public morality and decency), G.S. 14-190.9(a1) (felonious indecent exposure), G.S. 14-190.16 (first degree sexual exploitation of a minor), G.S. 14-190.17 (second degree sexual exploitation of a minor), G.S. 14-190.17A (third degree sexual exploitation of a minor), G.S. 14-190.18 (promoting prostitution of a minor), G.S. 14-190.19 (participating in the prostitution of a minor), G.S. 14-202.1 (taking indecent liberties with children), or G.S. 14-202.3 (Solicitation of child by computer to commit an unlawful sex act). The term also includes the following: a solicitation or conspiracy to commit any of these offenses; aiding and abetting any of these offenses."

SECTION 1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 2.(a) G.S. 14-208.6A reads as rewritten:

"**§ 14-208.6A. Lifetime registration requirements for criminal offenders.**

It is the objective of the General Assembly to establish a 10-year registration requirement for persons convicted of certain offenses against minors or sexually violent offenses. It is the further objective of the General Assembly to establish a more stringent set of registration requirements for recidivists, persons who commit aggravated offenses, and for a subclass of highly dangerous sex offenders who are determined by a sentencing court with the assistance of a board of experts to be sexually violent predators.

To accomplish this objective, there are established two registration programs: the Sex Offender and Public Protection Registration Program and the Sexually Violent Predator Registration Program. Any person convicted of an offense against a minor or of a sexually violent offense as defined by this Article shall register in person as an offender in accordance with Part 2 of this Article. Any person who is a recidivist, who commits an aggravated offense, or who is determined to be a sexually violent predator shall register in person as such in accordance with Part 3 of this Article.

The information obtained under these programs shall be immediately shared with the appropriate local, State, federal, and out-of-state law enforcement officials and penal institutions. In addition, the information designated under G.S. 14-208.10(a) as public

record shall be readily available to and accessible by the public. However, the identity of the victim is not public record and shall not be released as a public record."

SECTION 2.(b) This section becomes effective December 1, 2006.

SECTION 3.(a) G.S. 14-208.6B reads as rewritten:

"**§ 14-208.6B. Registration requirements for juveniles transferred to and convicted in superior court.**

A juvenile transferred to superior court pursuant to G.S. 7B-2200 who is convicted of a sexually violent offense or an offense against a minor as defined in G.S. 14-208.6 shall register in person in accordance with this Article just as an adult convicted of the same offense must register."

SECTION 3.(b) This section becomes effective December 1, 2006.

SECTION 4.(a) Part 2 of Article 27A of Chapter 14 is amended by adding a new section to read:

"**§ 14-208.8A. Notification requirement for out-of-county employment if temporary residence established.**

(a) Notice Required. – A person required to register under G.S. 14-208.7 shall notify the sheriff of the county with whom the person is registered of the person's place of employment and temporary residence, which includes a hotel, motel, or other transient lodging place, if the person meets both of the following conditions:

(1) Is employed or carries on a vocation in a county in the State other than the county in which the person is registered for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year, on a part-time or full-time basis, with or without compensation or government or educational benefit.

(2) Maintains a temporary residence, including in that county for more than 10 business days within a 30-day period, or for an aggregate period exceeding 30 days in a calendar year.

(b) Time Period. – The notice required by subsection (a) of this section shall be provided within 48 hours after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for more than 10 business days within a 30-day period, or within 10 days after the person knows or should know that he or she will be working and maintaining a temporary residence in a county other than the county in which the person resides for an aggregate period exceeding 30 days in a calendar year.

(c) Notice to Division. – Upon receiving the notice required under subsection (a) of this section, the sheriff shall immediately forward the information to the Division. The Division shall notify the sheriff of the county where the person is working and maintaining a temporary residence of the person's place of employment and temporary address in that county."

SECTION 4.(b) This section becomes effective June 1, 2007.

SECTION 5.(a) G.S. 14-208.7 is amended by adding a new subsection to read:

"(d) In-Person Registration Required. – Any person required to register under this section shall report in person at the appropriate sheriff's office to comply with the registration requirements set out in this section."

SECTION 5.(b) This section becomes effective December 1, 2006.

SECTION 6.(a) G.S. 14-208.9 reads as rewritten:

"**§ 14-208.9. Change of address; change of academic status or educational employment status.**

(a) In-State Address Change. – If a person required to register changes ~~address,~~ address within the same county, the person shall report in person and provide written notice of the new address not later than the tenth day after the change to the sheriff of ~~the county with whom the person had last registered.~~ that county. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division. If the person moves to another county in this State, ~~the~~ he or she shall report in person to the sheriff of the new county and provide written notice of the new address. The person shall also provide written notice of the new address to the sheriff of the county from which the person had last registered not later than the tenth day after moving to the new county. When the Division receives information that a person is moving from one county to another county in this State, the Division shall inform the sheriff of the new county of the person's new residence.

(b) Out-of-State Address Change. – If a person required to register moves to another state, the person shall provide written notice of the new address not later than 10 days after the change to the sheriff of the county with whom the person had last registered. The person shall report in person to provide the written notice. Upon receipt of the notice, the sheriff shall ~~notify~~ inform the person that the person must comply with the registration requirements in the new state of residence. The sheriff shall also immediately forward the change of address information to the Division, and the Division shall inform the appropriate state official in the state to which the registrant moves of the person's new address.

(c) Change of Academic Status. – If a person required to register changes his or her academic status either by enrolling as a student or by terminating enrollment as a student, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education at which the student is or was enrolled. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division.

(d) Change of Employment Status. – If a person required to register changes his or her employment status either by obtaining employment at an institution of higher education or by terminating employment at an institution of higher education, then the person shall report in person to the sheriff of the county with whom the person registered and provide written notice of the person's new status not later than the tenth day after the change to the sheriff of the county with whom the person registered. The written notice shall include the name and address of the institution of higher education

at which the person is or was employed. Upon receipt of the notice, the sheriff shall immediately forward this information to the Division."

SECTION 6.(b) This section becomes effective December 1, 2006.

SECTION 7.(a) G.S. 14-208.9A reads as rewritten:

"**§ 14-208.9A. Verification of registration ~~information.~~information; additional verification and photograph may be required.**

(a) Annual Verification. – The information in the county registry shall be verified annually for each registrant as follows:

(1) ~~Every year on~~ Thirty days prior to the anniversary of a person's initial registration date, the Division shall annually mail a nonforwardable verification form to the last reported address of the ~~person.~~person and shall also notify the sheriff of the county of the offender's last reported address that the verification form has been mailed.

(2) The person shall return the verification form in person to the sheriff within 10 days after the receipt of the form.

(3) The verification form shall be signed by the person and shall indicate whether the person still resides at the address last reported to the sheriff. If the person has a different address, then the person shall indicate that fact and the new address.

(3a) At the time the person returns the verification form, the sheriff shall take a photograph of the registrant to include with the verification form.

(4) If the person fails to return the verification form in person to the sheriff within 10 days after receipt of the form, the person is subject to the penalties provided in G.S. 14-208.11. If the ~~verification form is returned to the sheriff as undeliverable,~~person fails to report in person and provide the written verification as provided by this section, the sheriff shall make a reasonable attempt to verify that the person is residing at the registered address. If the person cannot be found at the registered address and has failed to report a change of address, the person is subject to the penalties provided in G.S. 14-208.11, unless the person reports in person to the sheriff and proves that the person has not changed his or her residential address.

(b) Additional Verification May Be Required. – During the period that an offender is required to be registered under this Article, the sheriff is authorized to attempt to verify that the offender continues to reside at the address last registered by the offender.

(c) Additional Photograph May Be Required. – If it appears to the sheriff that the current photograph of the sex offender no longer provides a true and accurate likeness of the sex offender, upon in person notice from the sheriff, the sex offender shall allow the sheriff to take another photograph of the sex offender at the time of the sheriff's request. If requested by the sheriff, the sex offender shall appear in person at the sheriff's office during normal business hours within 72 hours of being requested to do so

and shall allow the sheriff to take another photograph of the sex offender. A person who willfully fails to comply with this subsection is guilty of a Class 1 misdemeanor."

SECTION 7.(b) This section becomes effective December 1, 2006, and applies to offenses that occur on or after that date.

SECTION 8.(a) G.S. 14-208.11(a) reads as rewritten:

"(a) A person required by this Article to register who willfully does any of the following is guilty of a Class F felony:

(1) Fails to ~~register.~~register as required by this Article.

(2) Fails to notify the last registering sheriff of a change of ~~address.~~address as required by this Article.

(3) Fails to return a verification notice as required under G.S. 14-208.9A.

(4) Forges or submits under false pretenses the information or verification notices required under this Article.

(5) Fails to inform the registering sheriff of enrollment or termination of enrollment as a student.

(6) Fails to inform the registering sheriff of employment at an institution of higher education or termination of employment at an institution of higher education."

SECTION 8.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 9.(a) G.S. 14-208.11(a), as amended by Section 9 of this act, is amended by adding a new subdivision to read:

"(7) Fails to notify the registering sheriff of out-of-county employment if temporary residence is established as required under G.S. 14-208.8A."

SECTION 9.(b) This section becomes effective June 1, 2007, and applies to offenses committed on or after that date.

SECTION 9.1.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.11A. Duty to report noncompliance of a sex offender; penalty for failure to report in certain circumstances.**

(a) Any person who has reason to believe that an offender required to register under this Article is not complying, or has not complied with the requirements of this Article and who, with the intent to assist the offender in eluding a law enforcement agency that is seeking to find the offender to question the offender about, or to arrest the offender for his or her noncompliance with the requirements of this Article and who does any of the following is guilty of a Class H felony:

(1) Withholds information from, or does not notify, the law enforcement agency about the offender's noncompliance with the requirements of this Article and, if known, the whereabouts of the offender.

(2) Harbors, or attempts to harbor, or assists another person in harboring, or attempting to harbor, the offender.

(3) Conceals, or attempts to conceal, or assist another person in concealing, or attempting to conceal, the offender.

(4) Provides information to the law enforcement agency regarding the offender that the person knows to be false information.

(b) This section does not apply if the offender is incarcerated in or is in the custody of a local, State, private, or federal correctional facility."

SECTION 9.1.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 10.(a) G.S. 14-208.12A reads as rewritten:

"**§ 14-208.12A. Termination of registration requirement.**

(a) Automatic Termination. – The requirement that a person register under this Part automatically terminates 10 years from the date of initial county registration if the person has complied with the provisions of this Article during the 10-year registration period and the person has not been convicted of a subsequent offense requiring registration under this Article.

(b) Maintain Registration Until Registration Requirement Complete. – If there is a subsequent offense, the county registration records shall be retained until the registration requirement for the subsequent offense is terminated.

(c) Extension of Registration for Willful Failure to Comply. – If a person willfully failed to comply with the provisions of this Article during the 10-year registration period, the district attorney in the jurisdiction in which the person resides may petition the court not to terminate the registration requirement and to require the person to continue to maintain registration under the provisions of this Article for a period not to exceed 10 years. If the court finds that the person has willfully failed to comply with the provisions of this Article during the 10-year registration period, the court may grant the petition not to terminate the registration and shall enter an order requiring the person to continue to maintain the registration requirements for a period not to exceed 10 years."

SECTION 10.(b) This section becomes effective December 1, 2006, and applies to persons for whom the period of registration would terminate on or after that date.

SECTION 11.(a) Article 27A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-208.16. Residential restrictions.**

(a) A person required to register under this Part, or Part 3 of this Article, shall not knowingly reside within 1,000 feet of the property on which any public or nonpublic school, child care center, or public swimming pool is located.

(b) As used in this section, 'school' does not include home schools as defined in G.S. 115C-563 or institutions of higher education.

(c) This section does not apply to child care centers that are located on or within 1,000 feet of the property of an institution of higher education where the registrant is a student or is employed.

(d) Changes in the ownership of or use of property within 1,000 feet of a registrant's registered address that occur after a registrant establishes residency at the registered address shall not form the basis for finding that an offender is in violation of this section. For purposes of this subsection, residency is established when the registrant

purchases a residence, enters into a specifically enforceable contract to purchase a residence, or enters into a written lease contract for a residence.

(e) Violation of this section is a Class F Felony."

SECTION 11.(b) This section becomes effective December 1, 2006, and applies to all persons registered or required to register on or after that date. This section does not apply to persons who have established a residence prior to the effective date of this section by purchasing the residency or entering into a written lease contract for the residency. Residences established through a written lease contract prior to the effective date of this act may not be continued beyond the definite period of time specified in the lease at its execution.

SECTION 12.(a) G.S. 14-27.1(5) reads as rewritten:

"(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.~~buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person."

SECTION 12.(b) This section becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SECTION 13. The Department of Correction shall study and develop a plan for offering mental health treatment for incarcerated sex offenders designed to reduce the likelihood of recidivism. The Department shall study appropriate and effective mental health treatment techniques and alternatives. Services must be best practices, as determined by the Department. The Department will consult various stakeholders from organizations dedicated to the prevention of sexual assault, victims' advocacy organizations, and experts in the field of treatment of sexual offenders. The Department shall consider the fiscal impact, if any, of implementing the plan developed pursuant to this study.

The Department shall make a preliminary report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services no later than January 15, 2007, and a final report to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services and the General Assembly on or before October 1, 2007.

SECTION 14. The provisions of this act are severable. If any provision is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions of the act that can be given effect without the invalid provision.

SECTION 15. Except as otherwise provided in this act, this act is effective when it becomes law.

HOUSE BILL 2060*

Short Title:	Victims' Compensation Changes.	(Public)
Sponsors:	Representatives Haire, Kiser (Primary Sponsors); and Daughtridge.	
Referred to:	Judiciary IV.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAWS CONCERNING VICTIMS' COMPENSATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15B-2(1) reads as rewritten:

"(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically-related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of ~~three thousand five hundred dollars ($3,500)~~ five thousand dollars ($5,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

Allowable expense for medical care, counseling, rehabilitation, medically-related property, and other remedial treatment and care of a victim shall be limited to sixty-six and two-thirds percent (66 2/3%) of the amount usually charged by the provider for the treatment or care. If the provider is one that accepts Medicare, Medicaid, or similar government funding, then the provider shall accept the compensation paid under such program as allowable expense pursuant to this subdivision. By accepting the compensation paid as allowable expense pursuant to this subdivision, the provider agrees that the compensation is payment in full for the treatment or care and shall not charge or otherwise hold a claimant financially responsible for the cost of services in addition to the amount of allowable expense."

SECTION 2. G.S. 15B-4(a) reads as rewritten:

"(a) Subject to the limitations in G.S. 15B-22, compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met. Compensation shall only be paid for economic loss and not for noneconomic detriment or loss. The Commission shall follow the rules of liability applicable to civil tort law in North Carolina."

SECTION 3. G.S. 15B-11(c) reads as rewritten:

"(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim, without good cause, has not fully cooperated with appropriate law enforcement agencies or in the prosecution of criminal cases with regard to the criminally injurious conduct that is the basis for the award."

SECTION 4. This act becomes effective July 1, 2006, and applies to claims filed on or after that date.

HOUSE BILL 2060:
Victims' Compensation Changes

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 7, 2006
Introduced by:	Reps. Haire, Kiser	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2060 would make several changes to the laws governing the State's Victims' Compensation program. The changes were recommended by the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

BILL ANALYSIS:

Section 1. – Amends G.S.15B-2 to increase from $3,500 to $5,000 the total allowable expenses related to funerals, and to add language clarifying victims' compensation as the payor of last resort for medical expenses incurred by the victim.

Section 2. – Amends G.S. 15B-4 to add language clarifying that compensation under the victims' compensation program will not be paid for "noneconomic detriment". The term, which is defined in G.S. 15B-2(11), includes pain, suffering, inconvenience, physical impairment, and other non-pecuniary damage.

Section 3. – Amends G.S. 15B-11, to add language giving the victims' compensation program the discretion to deny, reduce, or reconsider an award where the victim, without good cause, fails to cooperate with the prosecution of a criminal case arising out of the criminally injurious conduct that is the basis of the award.

BACKGROUND: See attachment.

EFFECTIVE DATE: The bill would become effective July 1, 2006, and apply to victims' compensation claims filed on or after that date.

H2060e1-SMRI

Contact: Renee Hoffman
Date: Feburary 17, 2006
Phone: (919) 733-5027 x231

North Carolina's Victims Compensation Program In The Nation's Top Ten

RALEIGH – Increased state funding, improved technology and the dedication of staff members have propelled North Carolina's Crime Victims Compensation Program into the top ten states providing financial aid to crime victims. The program is run by the N.C. Victims Compensation Services Division of the Department of Crime Control and Public Safety (CCPS).

"Paying medical and funeral expenses and covering lost wages is the least we can do to help people who've been innocent victims of violent crime," said CCPS Secretary Bryan Beatty. "With Governor Easley and the General Assembly's support, we've been able to increase the state funding for this program in the last two years, and we are finally starting to catch up with the needs of crime victims."

Created in 1987, the Crime Victims Compensation Program pays innocent victims of violent crime up to $30,000 to restore victims' physical and mental health and replaces lost income for victims who cannot work. If the victim dies as a result of the crime, an additional $3,500 may be paid to the survivors for funeral expenses. The program pays funds only after other resources such as insurance, Medicaid, Worker's Compensation, and court-ordered restitution have been exhausted.

"Crime victims shouldn't suffer financial stress in addition to physical injuries and emotional trauma," said Janice Carmichael, Director of the Victims Compensation Services Division. "No amount of money can erase the pain of being a victim of a violent crime, but this program can help the recovery process."

In the Fiscal Year 2004-2005, Victim Compensation Services awarded 2,411 claims totaling $12.9 million to crime victims. The program was able to increase payouts due to increased funding and improvements in computerized claims processing. According to the National Association of Crime Victim Compensation Boards, North Carolina increased payouts by 97% over the previous year, making North Carolina the second fastest growing state compensation program, and ranking the state in the top ten of the largest state compensation programs.

The program receives an annual appropriation from the state and 60 cents from the federal government for every state dollar spent. It also gets 5% of profits from prison enterprises and 5% of prison canteen funds, which consist of purchases made by inmates from prison canteens, plus a grant from the federal Victims of Crime Act fund.

Even with triple the amount of state funding for the program over the past six years (from $2 million in FY 1999-2000 to $6.2 million in FY 2004-05) Victims Compensation still cannot keep up with the

number of claims coming into the program. Victims of rape, assault, child sexual abuse, domestic violence, and drunk driving, as well as the families of homicide victims, are all eligible to apply for financial help. Many of the victims represent North Carolina's most vulnerable populations.

In the current fiscal year, which runs from July 1, 2005 through June 30, 2006, the program has already approved 919 claims totaling more than $4.7 million. It's projected that at the end of this fiscal year, Victims Compensation will still have a significant number of claims that will not have been paid because the budget will be depleted. Victims are paid in the order in which their claims are approved, which means that if funds run short, some victims will not receive payments until the next fiscal year.

Responsibility for deciding compensation claims is shared by the program's director and a five-person board, the Crime Victims Compensation Commission. The board is made up of three members appointed by the governor, the senate president pro tempore, and the speaker of the house; plus the attorney general or his designee; and the CCPS secretary or his designee. The program director is authorized to make final decisions on applications for amounts not exceeding $7,500. Applications for amounts above $7,500 must be decided by the board. The program also pays for forensic examinations in sexual assault and rape cases through a separate process.

For more information on the Crime Victims Compensation Program, go to www.nccrimecontrol.org/vcs or call 1-800-826-6200.

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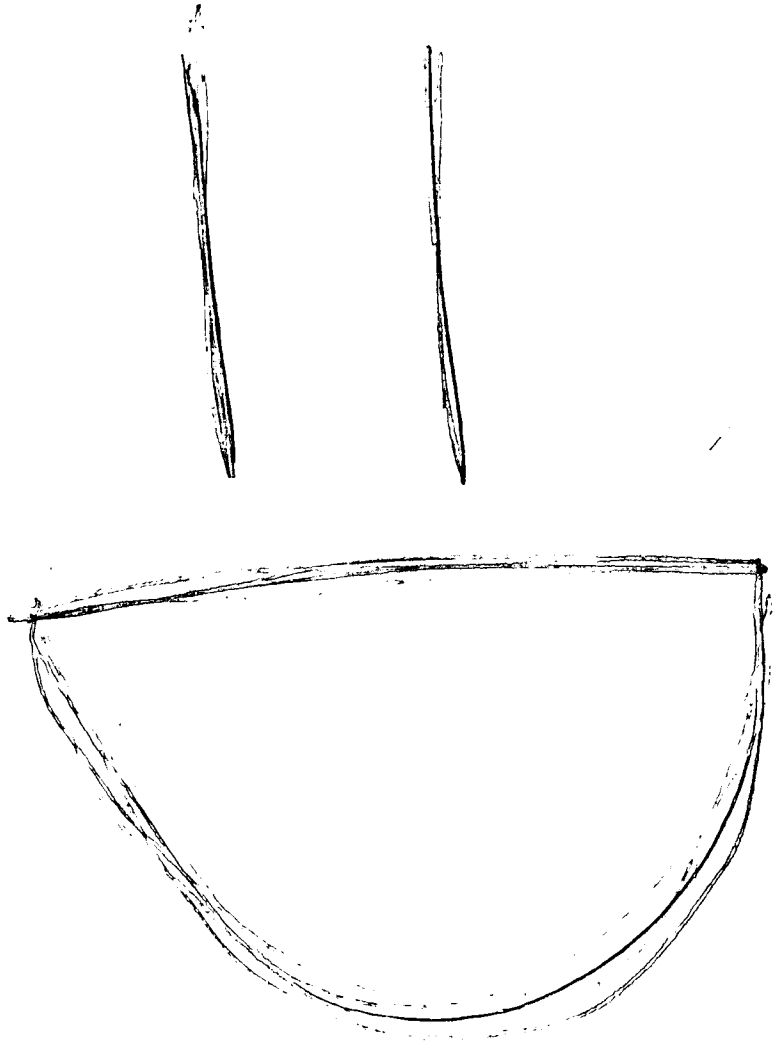
VISITOR REGISTRATION SHEET

JUDICIARY IV — JUNE 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Janice Carmichael	CCPS
Ashbora White	CCPS
CHRIS TUCKER	CCPS
Ashby Ray	NC AGO
Jerry Rattley	SBI
Jami Fitzgerald	NCFPC
Holly Bryan	NCATL
Gail Glatzberger	ACLU-NC
Mildred Spearman	DOC
Tim Moore	DOC
John Madler	NC Sentencing Commission



VISITOR REGISTRATION SHEET

JUDICIARY IV — JUNE 8, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cally Wiggins	GOV's office
Meredith Bishop	AG's office
GARRETT ARTZ	NC AGO
Kelly McCullen	UNC-TV
Eddie Caldwell	NC Sheriffs' Assn.
Selena Berner	NC Child Fatality Task Force
CHRIS BATTISTA	SBI
Cameron Contizano	Daily Bulletin
Colleen Kachanek	Smith Moore
Kevin Leonard	WCSR
Chad Hinton	Civitas Institute

VISITOR REGISTRATION SHEET

JUDICIARY IV — 6/8/06

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carrie Randa	NC CASA
Jeffy Watts	GAIO
Caroline Reinke	Action for Children

House Pages

Name Of Committee: J4 Date: 6/8/06

1. Name: Samantha Cernuto
   County: Iredell
   Sponsor: Rep. Karen Ray
2. Name: Alex McLamb
   County: Wake
   Sponsor: Rep. Dickson
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: MARK CONE
2. Name: JAMES WORTH
3. Name: _____
4. Name: _____
5. Name: _____

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, June 20, 2006

The House Committee on Judiciary IV met on Tuesday, June 20, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Representatives Leo Daughtry, Carolyn Justus, Grier Martin, Earline Parmon, Karen Ray, Tim Spear, Ex-Officio Member Pete Cunningham and staff attorneys Trina Griffin, Steve Rose and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration List is attached and made part of these minutes.

After calling the meeting to order and welcoming members and guests, Chairman Weiss announced that HB 2060, VICTIM'S COMPENSATION CHANGES, would be the first bill to be heard. Senator Kinnaird, sponsor of the Senate companion bill, was asked to introduce the bill. She stated the bill does not add appropriations, but does take funds out of the existing funds. It allows an increase from $3,500 to $5,000 for expenses related to a funeral. This will be a help to the family of a victim when funeral homes demand payment before services directly relating to the funeral are provided. Ms. Jennifer McGinnis, staff member, explained other changes in the bill. Discussion followed with Ms. Janice Carmichael, Director of Victim's Compensation, answering questions from the members. A question regarding an appropriation was raised by Chairman Weiss. Senator Kinnaird said that there is already a Victim's Compensation Fund, and within that fund more monies will come out for funeral expenses. Ms. Denise Thomas, NCGA Fiscal Analyst, was present and spoke to the question. She said that both the House and Senate budgets have provided, at least for one year, some funds that are unspecified to pay victim's compensation claims. By June 30th there will be about $2,500,000 in claims waiting to be paid. On July 1st, 2006 those claims will be paid out of the upcoming budget, which will deplete the budget for the upcoming year. She said that there are now more claims and for higher amounts. More discussion followed with Representative Spear suggesting that instead of waiting until after a trial to make an award when it is difficult to make the defendant pay restitution, a letter be sent to the Clerk of Court stating that an award is approved and asking the sentencing judge to include that award as a provision of the judgment. Chairman Weiss suggested that Representative Spear take up that matter with the bill sponsors for consideration in future legislation. Representative Parmon moved to give HB 2060 a favorable report. The motion was adopted.

Chairman Weiss announced that there is a Proposed Committee Substitute for HB 2200, ENHANCE EMBARGO AUTH/PROTECT FOOD SUPPLY, the next bill on the agenda. Representative Martin moved to have the PCS before the committee for discussion purposes. The motion was adopted. She welcomed Representative Cunningham, a co-sponsor of HB 2200, and asked him to present the bill. He said the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery found several errors that needed to be corrected to make the state safer. Representative Cunningham asked Representative Glazier, also a co-sponsor of HB 2200, to speak on the bill. He said the bill came as a unanimous recommendation from the Bioterrorism and Public Health Subcommittee and then as a unanimous bipartisan recommendation from the full committee. The bill was drafted by four departments and in consensus by the Department of Agriculture, Dept of Environment and Natural Resources, the Attorney General's office, and the Department of Health and Human Services. Representative Glazier further stated that there is no opposition to the bill but there is an amendment with two technical changes. The bill enhances embargo authority by the Secretary of Environment and

Natural Resources, and local health directors and directs them to development a plan to protect the food supply from intentional contamination. The amendment was read by Chairman Weiss. Representative Glazier explained that the first part of the amendment was a grammatical correction; the second part of the amendment changed the effective date. Representative Daughtry moved to adopt the amendment. The motion was adopted. Chairman Weiss recognized Dr. Leah Devlin, Director of Public Health, who stated that the bill is a strong collaboration between agencies on an issue that is important to protecting public health. Representative Parmon moved that the Proposed Committee Substitute, as amended, receive a favorable report, unfavorable to the original bill. The motion was adopted. Representative Glazier requested an incarceration note on the bill. Chairman Weiss said that would be done before the bill comes to the floor.

There being no further business, the meeting was adjourned at 10:30 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 2060: Copy of Bill, Bill Analysis, NC Crime Victims Compensation Program Press Release Handout dated February 17, 2006, Committee Report; HB 2200: Copy of Bill, Bill Analysis, Amendment, Committee Substitute, Committee Report; Visitor Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, June 20, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 2060 – VICTIM'S COMPENSATION CHANGES.
Representatives Haire and Kiser

HB 2200 – ENHANCE EMBARGO AUTH/PROTECT FOOD SUPPLY.
Representatives Cunningham and Glazier

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

HOUSE BILL 2060*

Short Title:	Victims' Compensation Changes.	(Public)
Sponsors:	Representatives Haire, Kiser (Primary Sponsors); and Daughtridge.	
Referred to:	Judiciary IV.	

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE LAWS CONCERNING VICTIMS' COMPENSATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

The General Assembly of North Carolina enacts:

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"(1) "Allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, medically-related property, and other remedial treatment and care.

Allowable expense includes a total charge not in excess of ~~three thousand five hundred dollars ($3,500)~~ five thousand dollars ($5,000) for expenses related to funeral, cremation, and burial, including transportation of a body, but excluding expenses for flowers, gravestone, and other items not directly related to the funeral service.

Allowable expense for medical care, counseling, rehabilitation, medically-related property, and other remedial treatment and care of a victim shall be limited to sixty-six and two-thirds percent (66 2/3%) of the amount usually charged by the provider for the treatment or care. If the provider is one that accepts Medicare, Medicaid, or similar government funding, then the provider shall accept the compensation paid under such program as allowable expense pursuant to this subdivision. By accepting the compensation paid as allowable expense pursuant to this subdivision, the provider agrees that the compensation is payment in full for the treatment or care and shall not charge or otherwise hold a claimant financially responsible for the cost of services in addition to the amount of allowable expense."

SECTION 2. G.S. 15B-4(a) reads as rewritten:

"(a) Subject to the limitations in G.S. 15B-22, compensation for criminally injurious conduct shall be awarded to a claimant if substantial evidence establishes that the requirements for an award have been met. Compensation shall only be paid for economic loss and not for noneconomic detriment or loss. The Commission shall follow the rules of liability applicable to civil tort law in North Carolina."

SECTION 3. G.S. 15B-11(c) reads as rewritten:

"(c) A claim may be denied, an award of compensation may be reduced, and a claim that has already been decided may be reconsidered upon finding that the claimant or victim, without good cause, has not fully cooperated with appropriate law enforcement agencies or in the prosecution of criminal cases with regard to the criminally injurious conduct that is the basis for the award."

SECTION 4. This act becomes effective July 1, 2006, and applies to claims filed on or after that date.

HOUSE BILL 2060:
Victims' Compensation Changes

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 7, 2006
Introduced by:	Reps. Haire, Kiser	**Summary by:**	Jennifer McGinnis
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 2060 would make several changes to the laws governing the State's Victims' Compensation program. The changes were recommended by the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committee.

BILL ANALYSIS:

Section 1. – Amends G.S.15B-2 to increase from $3,500 to $5,000 the total allowable expenses related to funerals, and to add language clarifying victims' compensation as the payor of last resort for medical expenses incurred by the victim.

Section 2. – Amends G.S. 15B-4 to add language clarifying that compensation under the victims' compensation program will not be paid for "noneconomic detriment". The term, which is defined in G.S. 15B-2(11), includes pain, suffering, inconvenience, physical impairment, and other non-pecuniary damage.

Section 3. – Amends G.S. 15B-11, to add language giving the victims' compensation program the discretion to deny, reduce, or reconsider an award where the victim, without good cause, fails to cooperate with the prosecution of a criminal case arising out of the criminally injurious conduct that is the basis of the award.

BACKGROUND: See attachment.

EFFECTIVE DATE: The bill would become effective July 1, 2006, and apply to victims' compensation claims filed on or after that date.

H2060e1-SMRI

Contact: Renee Hoffman
Date: Feburary 17, 2006
Phone: (919) 733-5027 x231

North Carolina's Victims Compensation Program In The Nation's Top Ten

RALEIGH – Increased state funding, improved technology and the dedication of staff members have propelled North Carolina's Crime Victims Compensation Program into the top ten states providing financial aid to crime victims. The program is run by the N.C. Victims Compensation Services Division of the Department of Crime Control and Public Safety (CCPS).

"Paying medical and funeral expenses and covering lost wages is the least we can do to help people who've been innocent victims of violent crime," said CCPS Secretary Bryan Beatty. "With Governor Easley and the General Assembly's support, we've been able to increase the state funding for this program in the last two years, and we are finally starting to catch up with the needs of crime victims."

Created in 1987, the Crime Victims Compensation Program pays innocent victims of violent crime up to $30,000 to restore victims' physical and mental health and replaces lost income for victims who cannot work. If the victim dies as a result of the crime, an additional $3,500 may be paid to the survivors for funeral expenses. The program pays funds only after other resources such as insurance, Medicaid, Worker's Compensation, and court-ordered restitution have been exhausted.

"Crime victims shouldn't suffer financial stress in addition to physical injuries and emotional trauma," said Janice Carmichael, Director of the Victims Compensation Services Division. "No amount of money can erase the pain of being a victim of a violent crime, but this program can help the recovery process."

In the Fiscal Year 2004-2005, Victim Compensation Services awarded 2,411 claims totaling $12.9 million to crime victims. The program was able to increase payouts due to increased funding and improvements in computerized claims processing. According to the National Association of Crime Victim Compensation Boards, North Carolina increased payouts by 97% over the previous year, making North Carolina the second fastest growing state compensation program, and ranking the state in the top ten of the largest state compensation programs.

The program receives an annual appropriation from the state and 60 cents from the federal government for every state dollar spent. It also gets 5% of profits from prison enterprises and 5% of prison canteen funds, which consist of purchases made by inmates from prison canteens, plus a grant from the federal Victims of Crime Act fund.

Even with triple the amount of state funding for the program over the past six years (from $2 million in FY 1999-2000 to $6.2 million in FY 2004-05) Victims Compensation still cannot keep up with the

number of claims coming into the program. Victims of rape, assault, child sexual abuse, domestic violence, and drunk driving, as well as the families of homicide victims, are all eligible to apply for financial help. Many of the victims represent North Carolina's most vulnerable populations.

In the current fiscal year, which runs from July 1, 2005 through June 30, 2006, the program has already approved 919 claims totaling more than $4.7 million. It's projected that at the end of this fiscal year, Victims Compensation will still have a significant number of claims that will not have been paid because the budget will be depleted. Victims are paid in the order in which their claims are approved, which means that if funds run short, some victims will not receive payments until the next fiscal year.

Responsibility for deciding compensation claims is shared by the program's director and a five-person board, the Crime Victims Compensation Commission. The board is made up of three members appointed by the governor, the senate president pro tempore, and the speaker of the house; plus the attorney general or his designee; and the CCPS secretary or his designee. The program director is authorized to make final decisions on applications for amounts not exceeding $7,500. Applications for amounts above $7,500 must be decided by the board. The program also pays for forensic examinations in sexual assault and rape cases through a separate process.

For more information on the Crime Victims Compensation Program, go to www.nccrimecontrol.org/vcs or call 1-800-826-6200.

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2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 2060 A BILL TO BE ENTITLED AN ACT TO MAKE CHANGES TO THE LAWS CONCERNING VICTIMS' COMPENSATION, AS RECOMMENDED BY THE JOINT LEGISLATIVE CORRECTIONS, CRIME CONTROL, AND JUVENILE JUSTICE OVERSIGHT COMMITTEE.

☒ With a favorable report.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H **1**

HOUSE BILL 2200*

Short Title:	Enhance Embargo Auth/Protect Food Supply. (Public)
Sponsors:	Representatives Cunningham, Glazier (Primary Sponsors); Coleman, Goforth, Harrison, Insko, Lucas, McAllister, Rapp, Underhill, and Wray.
Referred to:	Agriculture.

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-21 reads as rewritten:

"**§ 130A-21. Embargo.**

(a) In addition to the authority of the Commissioner of Agriculture pursuant to G.S. 106-25, ~~The~~ the Secretary of Environment and Natural Resources ~~and~~ or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when ~~delegated the authority by the Commissioner of Agriculture.~~ the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or their superiors, in programs regulating food and drink pursuant to this Chapter. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When such action is taken, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this subsection, all duties and procedures in G.S. 106-125

shall be carried out by the Secretary of the Department of Environment and Natural Resources or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Environment and Natural Resources Regional Environmental Health Specialist or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds that the article is adulterated or misbranded, that article shall be destroyed under the

supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130."

SECTION 2. Article 22 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-481. Food defense.**

The Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and Department of Health and Human Services shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including, but not limited to, the protection of plants, crops, and livestock."

SECTION 3. This act is effective when it becomes law.

HOUSE BILL 2200:
Enhance Embargo Auth/Protect Food Supply

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 12, 2006
Introduced by:	Reps. Cunningham, Glazier	**Summary by:**	Steven Rose
Version:	H2200-CSRL-51		Committee Counsel

SUMMARY: ***The PCS for HB 2200 amends G.S. 130A-21 to authorize the Secretary of Environment and Natural Resources or a local health director to exercise embargo authority concerning food or drink in an establishment subject to regulation by DENR (restaurants and hotels) or subject to an investigation by the local health director in the case of communicable diseases. When such action is taken, the Department of Agriculture and Consumer Services must be notified. It is unlawful to dispose of the embargoed food or drink without proper authority.***

(G.S. 130A-25 provides that a violation of Chapter 130A is a misdemeanor. G.S. 14-3 provides that an unclassified misdemeanor is a Class 1 misdemeanor. If no specific punishment is prescribed and the offense is infamous, done in secrecy and malice, or with deceit and intent to defraud, it is a Class H felony.)

The bill also requires the Department of Agriculture and Consumer Services, DENR and DHHS to jointly develop a plan to protect the food supply from intentional contamination.

[As introduced, this bill was identical to S1495, as introduced by Sen. Nesbitt, which is currently in Rules and Operations of the Senate.]

CURRENT LAW: Currently, G.S. 130A-21 authorizes DENR and local health directors to exercise embargo authority when the authority is delegated by the Commissioner of Agriculture.

EFFECTIVE DATE: The act is effective December 1, 2006 and applies to offenses committed on or after that date.

BACKGROUND: This bill was recommended by the Joint Study Committee on Emergency Preparedness and Disaster Management Recovery.

H2200e1-SMRL

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 2200 DATE _____

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

COMMITTEE SUBSTITUTE CSRL-51 [v.5]

(Rep.) Glazier
Sen.)

moves to amend the bill on page 1, line 26

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"G.S. 130A-4. When any action is taken pursuant to this section, the Department of Environment and Natural";

and on page 3, lines 25-26, by rewriting the lines to read:

"SECTION 3. Section 2 of this act is effective when ~~it~~ it becomes law. The remainder of this act is effective December 1, 2006 and applies to offenses committed on or after that date.".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2200*
PROPOSED COMMITTEE SUBSTITUTE H2200-PCS30605-RL-51

Short Title: Enhance Embargo Auth/Protect Food Supply. (Public)

Sponsors:

Referred to:

May 18, 2006

A BILL TO BE ENTITLED

AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 130A-21 reads as rewritten:

"**§ 130A-21. Embargo.**

(a) In addition to the authority of the Department of Agriculture and Consumer Services pursuant to G.S. 106-125, ~~The~~ the Secretary of Environment and Natural Resources ~~and~~ or a local health director has authority to exercise embargo authority concerning food or drink pursuant to G.S. 106-125(a), (b) and (c) when ~~delegated the authority by the Commissioner of Agriculture.~~ the food or drink is in an establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter or that is the subject of an investigation pursuant to G.S. 130A-144; however, no such action shall be taken in any establishment or part of an establishment that is under inspection or otherwise regulated by the Department of Agriculture and Consumer Services or the United States Department of Agriculture other than the part of the establishment that is subject to regulation by the Department of Environment and Natural Resources pursuant to this Chapter. Any action under this section shall only be taken by, or after consultation with, Department of Environment and Natural Resources regional environmental health specialists, or their superiors, in programs regulating food and drink pursuant to this Chapter. Authority under this section shall not be delegated to individual environmental health specialists in local health departments otherwise authorized and carrying out laws and rules pursuant to G.S. 130A-4. When any action is taken pursuant to this section, the Department of Environment and Natural Resources or the local health director shall immediately notify the Department of Agriculture and Consumer Services. For the purposes of this

subsection, all duties and procedures in G.S. 106-125 shall be carried out by the Secretary of the Department of Environment and Natural Resources or the local health director and shall not be required to be carried out by the Department of Agriculture and Consumer Services. It shall be unlawful for any person to remove or dispose of the food or drink by sale or otherwise without the permission of a Department of Environment and Natural Resources regional environmental health specialist or a duly authorized agent of the Department of Agriculture and Consumer Services, or by the court in accordance with the provisions of G.S. 106-125.

(b) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any milk designated as Grade "A" milk is misbranded or does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the milk by affixing a tag to it and warning all persons not to remove or dispose of the milk until permission for removal or disposal is given by the official by whom the milk was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed milk without that permission.

The official by whom the milk was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the milk is detained or embargoed for an order for condemnation of the article. If the court finds that the milk is misbranded or that it does not satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, either the milk shall be destroyed under the supervision of the petitioner or the petitioner shall ensure that the milk will not be used for human consumption as Grade "A" milk. All court costs and fees, storage, expenses of carrying out the court's order and other expense shall be taxed against the claimant of the milk. If, the milk, by proper labelling or processing, can be properly branded and will satisfy the milk sanitation rules adopted pursuant to G.S. 130A-275, the court, after the payment of all costs, fees, and expenses and after the claimant posts an adequate bond, may order that the milk be delivered to the claimant for proper labelling and processing under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court either that the milk is no longer mislabelled or in violation of the milk sanitation rules adopted pursuant to G.S. 130A-275, or that the milk will not be used for human consumption, and that in either case the expenses of supervision have been paid.

(c) If the Secretary of Environment and Natural Resources or a local health director has probable cause to believe that any scallops, shellfish or crustacea is adulterated or misbranded, the Secretary of Environment and Natural Resources or a local health director may detain or embargo the article by affixing a tag to it and warning all persons not to remove or dispose of the article until permission for removal or disposal is given by the official by whom it was detained or embargoed or by the court. It shall be unlawful for any person to remove or dispose of the detained or embargoed article without that permission.

The official by whom the scallops, shellfish or crustacea was detained or embargoed shall petition a judge of the district or superior court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the court finds

that the article is adulterated or misbranded, that article shall be destroyed under the supervision of the petitioner. All court costs and fees, storage and other expense shall be taxed against the claimant of the article. If, the article, by proper labelling can be properly branded, the court, after the payment of all costs, fees, expenses, and an adequate bond, may order that the article be delivered to the claimant for proper labelling under the supervision of the petitioner. The bond shall be returned to the claimant after the petitioner represents to the court that the article is no longer mislabelled and that the expenses of supervision have been paid.

(d) Nothing in this section is intended to limit the embargo authority of the Department of Agriculture and Consumer Services. The Department of Environment and Natural Resources and the Department of Agriculture and Consumer Services are authorized to enter agreements respecting the duties and responsibilities of each agency in the exercise of their embargo authority.

(e) For the purpose of this section, a food or drink is adulterated if the food or drink is deemed adulterated under G.S. 106-129; and food or drink is misbranded if it is deemed misbranded under G.S. 106-130."

SECTION 2. Article 22 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"**§ 130A-481. Food defense.**

The Department of Agriculture and Consumer Services, Department of Environment and Natural Resources, and Department of Health and Human Services shall jointly develop a plan to protect the food supply from intentional contamination. The plan shall address protection of the food supply from production to consumption, including, but not limited to, the protection of plants, crops, and livestock."

SECTION 3. Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

☐ Committee Substitute for

HB 2200 A BILL TO BE ENTITLED AN ACT TO ENHANCE THE EMBARGO AUTHORITY OF THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES AND LOCAL HEALTH DIRECTORS AND TO DIRECT THE DEVELOPMENT OF A STATE PLAN TO PROTECT THE FOOD SUPPLY FROM INTENTIONAL CONTAMINATION.

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

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

VISITOR REGISTRATION SHEET

JUDICIARY IV — JUNE 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeff Wolfe	Daily Bulletin
Jon Carr	Jordan Price (NC Funeral Directors)
Steve Wall	DENR
David McLeod	NCDA+CS
[signature]	DHHS
John Barkley	DOJ for DHHS, DENR
Carrie Randa	NCCHSA
Janice Carmichael	CCPS
Cassandra White	CCPS
[signature]	DHHS
Deborah Ramsey	NCPNA / WCALRD

VISITOR REGISTRATION SHEET

JUDICIARY IV — JUNE 20, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry L. Pierce	DENR
Cally Wiggins	Gov's office
Kathryn Pomeroy	Gov's office

House Pages

Name Of Committee: JIV Date: 6/20/06

1. Name: Parker Ray Brown
   County: Northampton
   Sponsor: Rep Michael Wray
2. Name: Elizabeth Priest
   County: Bladen
   Sponsor: Rep. Edd Nye
3. Name: Matthew Locklear
   County: Robeson
   Sponsor: Rep. Bonnie Sutton
4. Name: Millie Jo[illegible]
   County: Scotland
   Sponsor: Rep. Block
5. Name: Elizabeth Locklear
   County: Robeson
   Sponsor: Rep. Bonnie Sutton

Sgt-At-Arms

1. Name: WILL HEALTH
2. Name: FRED HINES
3. Name: JAMES WORTH
4. Name:
5. Name:

MINUTES, HOUSE COMMITTEE ON JUDICIARY IV
Tuesday, June 27, 2006

The House Committee on Judiciary IV met on Tuesday, June 27, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Tim Spear, and staff attorneys Trina Griffin, Steve Rose and Jennifer McGinnis. The Pages and Sergeants-at-Arms serving at the meeting were introduced. A Visitor Registration List is attached and made part of these minutes.

After calling the meeting to order and welcoming members and guests, Chairman Weiss announced that HB 2880, NO PRAYER FOR JUDGMENT/BUS STOP ARM VIOLATIONS, would be the first bill to be heard. A motion to accept the Proposed Committee Substitute for discussion was adopted. Representative Dale Folwell, sponsor of the bill, introduced the bill and showed a short film clip on the consequences of not stopping for a school bus and on what the Prayer for Judgment Continued clause means. With a Prayer for Judgment Continued, a person pleads guilty but there is no conviction placed on his record and no points on his driver's license. Representative Folwell stated that the bill has the support of former Chief Justice I. Beverly Lake, and has the endorsement of Secretary Beatty, NC Department of Public Safety and Crime Control, Commissioner Long, NC Department of Insurance, Colonel Clay, NC Highway Patrol and the NC Sheriff's Association. Trina Griffin, staff attorney, went through the bill and further explained Prayer for Judgment Continued. Discussion followed. Mr. Derrick Graham, Special Chief of Transportation, Department of Public Instruction, said, in answer to a question, that amber lights on a school bus flash until the bus door is opened and red lights flash when the school bus door is actually open. Following more discussion, Representative Parmon moved to give a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. The motion was adopted.

Representative Justus moved to have the PCS for HB 2041 – CIVILIAN TRAFFIC INVESTIGATORS, adopted for discussion purposes. The motion was adopted. Representative Dickson, sponsor, spoke on the differences in the original bill and the Proposed Committee Substitute. This is a local bill and applies only to the City of Fayetteville. Chief Tom McCarthy, Chief of Police for the City of Fayetteville, spoke in support of the bill which would allow trained civilians to be traffic investigators in this pilot program. Steve Rose, staff attorney, highlighted changes in the bill. Discussion followed. Mr. Wayne Godwin, Assistant Commissioner, NC Department of Insurance, said the bill has the support of the Department of Insurance. More discussion followed. Chief McCarthy assured the committee that those taking part in the program will be well trained and will carry a radio so that if help is needed from a police officer, the response would be rapid. Representative Glazier moved to give a favorable report to the Proposed Committee Substitute, unfavorable to the original bill. The motion was adopted.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, HB 2041: Copy of Bill, Bill Analysis, Committee Substitute, Committee Report; HB 2880: Copy of Bill, Proposed Committee Substitute, Handout, Committee Report; Visitor Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, June 27, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 2041 – CIVILIAN TRAFFIC INVESTIGATORS.
Representatives Dickson and Glazier

HB 2880 – NO PRAYER FOR JUDGMENT/BUS STOP ARM VIOLATION.
Representative Folwell

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 2

HOUSE BILL 2041*

Committee Substitute Favorable 6/15/06

Short Title: Civilian Traffic Investigators. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF FAYETTEVILLE TO USE CIVILIAN TRAFFIC INVESTIGATORS TO INVESTIGATE PROPERTY DAMAGE CRASHES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Fayetteville only.

SECTION 2. Notwithstanding any other provision of law, the City of Fayetteville is hereby authorized to employ and allow civilian personnel to investigate traffic crashes. The civilian personnel shall be known as "Civilian Traffic Investigators".

SECTION 3. The City of Fayetteville shall establish the minimum standards for employment as a Civilian Traffic Investigator.

SECTION 4. Each Civilian Traffic Investigator shall attend a training program designed by Fayetteville Technical Community College, Office of Protective Services Training. Upon completion of the training program, a Civilian Traffic Investigator shall spend not less than four weeks of field training with a law enforcement officer who is a certified traffic investigator and has experience conducting traffic crash investigations.

SECTION 5. Each Civilian Traffic Investigator shall be issued credentials by the City of Fayetteville identifying the individual as a Civilian Traffic Investigator. The Civilian Traffic Investigator shall produce official credentials at any time when requested by a member of the public involved in or as a witness to a crash. A Civilian Traffic Investigator shall be issued a uniform that is substantially different in color and style from that of a law enforcement officer for the City of Fayetteville. Civilian Traffic Investigators shall not be issued badges.

SECTION 6. Any vehicles issued to, or used by, a Civilian Traffic Investigator shall not bear markings or symbols that identify the vehicle as a police vehicle. The vehicle may have emergency equipment and lights installed but shall not use blue lights in any manner or form. Red and amber lights are permissible.

SECTION 7. Civilian Traffic Investigators shall investigate only crashes involving property damage. A Civilian Traffic Investigator shall comply with all provisions of G.S. 20-166.1. However, a report completed by a Civilian Traffic Investigator shall be treated the same as if it were completed by a law enforcement officer for the purposes of evidence and trial pursuant to G.S. 20-166.1(i). A law enforcement officer shall investigate any crash involving personal injury or a fatality.

SECTION 8. A Civilian Traffic Investigator shall have no authority to arrest or issue criminal process. They shall not be issued a weapon of any type. An assault on a Civilian Traffic Investigator is a violation of G.S. 14-33(c)(4).

SECTION 9. A Civilian Traffic Investigator shall have the same authority as a law enforcement officer to tow or remove a vehicle that is obstructing a public street or highway.

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

HOUSE BILL 2041:
Civilian Traffic Investigators

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 26, 2006
Introduced by:	Reps. Dickson, Glazier	**Summary by:**	Steven Rose
Version:	PCS to Second Edition H2041-CSRL		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for House Bill 2041 authorizes the City of Fayetteville to employ civilian traffic investigators, and authorizes them to investigate traffic crashes.***

CURRENT LAW: G.S. 20-166.1 governs the reports and investigations required in the event of a traffic accident. It requires that the appropriate law enforcement agency investigate a reportable accident. A reportable accident is defined in G.S. 20-4.01 as an accident involving a motor vehicle that results in (i) the death or injury of a human being, (ii) property damage of $1,000 or more, or (iii) property damage of any amount to a vehicle seized for an offense involving impaired driving while license revoked. The report of an accident must contain information on financial responsibility for the vehicle driven by the person whom the officer identifies as at fault for the accident. If the officer writing the report is a member of the State Highway Patrol, the officer must forward the report to the Division of Motor Vehicles. If the officer is not a member of the State Highway Patrol, the officer must forward the report to the local law enforcement agency for the area where the accident occurred. A local law enforcement agency that receives an accident report must forward it to DMV within 10 days after receiving the report.

G.S. 20-166.1 provides that a report of an accident made by a person who is not a law enforcement officer is without prejudice, is for the use of DMV only, and cannot be used in any manner as evidence, or for any other purpose in any trial, civil or criminal, arising out of the accident. The statute specifies that reports made by persons who are not law enforcement officers or medical examiners are not public records.

Other reports made under G.S. 20-166.1 may be used in any manner including at a trial pursuant to the rules of evidence. Reports made by law enforcement officers and medical examiners are public records and are open to inspection by the general public at all reasonable times.

BILL ANALYSIS: House Bill 2041 (proposed committee substitute):

- Authorizes the City of Fayetteville to employ civilian traffic investigators, and authorizes them to investigate traffic crashes.
- Authorizes the City of Fayetteville to establish minimum standards for employment as a civilian traffic investigator.
- Requires each civilian traffic investigator to attend a training program designed by Fayetteville Technical Community College in consultation with the North Carolina Academy of Justice, and spend four weeks of field training with a law enforcement officer.
- Provides that the civilian traffic investigators be issued credentials, uniforms, and vehicles with red or amber lights only. Uniforms shall bear a patch identifying them as civilian traffic investigators. Their names must be clearly displayed. They shall not be issued badges.

- Provides that civilian traffic investigators shall: investigate crashes involving only property damage, comply with all provision of G.S. 20-166.1 governing accident reports and investigations, and that their reports be treated the same as if completed by a law enforcement officer for the purposes of G.S. 20-166.1(i).
- Provides that civilian traffic investigators shall not have authority to arrest or issue criminal process, and shall not carry a weapon.
- Provides that civilian traffic investigators shall have the same authority as a law enforcement officer to tow or remove a vehicle that is obstructing a public street or highway.
- Requires the City of Fayetteville to report to the House Appropriations Subcommittee on Justice and Public Safety and the Senate Committee on Appropriations on Justice and Public Safety by December 31, 2007 on the training and use of civilian traffic investigators.

EFFECTIVE DATE: Effective when it becomes law.

H2041e2-SMRL-CSRL

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2041*

Committee Substitute Favorable 6/15/06

PROPOSED COMMITTEE SUBSTITUTE H2041-CSRL-52 [v.5]

6/26/2006 8:44:38 PM

Short Title: Civilian Traffic Investigators. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF FAYETTEVILLE TO USE CIVILIAN TRAFFIC INVESTIGATORS TO INVESTIGATE PROPERTY DAMAGE CRASHES.

The General Assembly of North Carolina enacts:

SECTION 1. This act applies to the City of Fayetteville only.

SECTION 2. Notwithstanding any other provision of law, the City of Fayetteville is hereby authorized to employ and allow civilian personnel to investigate traffic crashes. The civilian personnel shall be known as "Civilian Traffic Investigators".

SECTION 3. The City of Fayetteville shall establish the minimum standards for employment as a Civilian Traffic Investigator.

SECTION 4. Each Civilian Traffic Investigator shall attend a training program designed by Fayetteville Technical Community College, Office of Protective Services Training in consultation with the North Carolina Justice Academy. Upon completion of the training program, a Civilian Traffic Investigator shall spend not less than four weeks of field training with a law enforcement officer who has experience conducting traffic crash investigations.

SECTION 5. Each Civilian Traffic Investigator shall be issued credentials by the City of Fayetteville identifying the individual as a Civilian Traffic Investigator. The Civilian Traffic Investigator shall produce official credentials at any time when requested by a member of the public involved in or as a witness to a crash. A Civilian Traffic Investigator shall be issued a uniform that is substantially different in color and style from that of a law enforcement officer for the City of Fayetteville. The uniform shall have patches that clearly identify the individual as a Civilian Traffic Investigator. The individual's name shall be clearly displayed on the uniform. Civilian Traffic Investigators shall not be issued badges.

SECTION 6. Any vehicles issued to, or used by, a Civilian Traffic Investigator shall not bear markings or symbols that identify the vehicle as a police vehicle. The vehicle may have emergency equipment and lights installed but shall not use blue lights in any manner or form. Red and amber lights are permissible.

SECTION 7. Civilian Traffic Investigators shall investigate crashes involving only property damage. A Civilian Traffic Investigator shall comply with all provisions of G.S. 20-166.1. A report completed by a Civilian Traffic Investigator shall be treated the same as if it were completed by a law enforcement officer for the purposes of G.S. 20-166.1(i). A law enforcement officer shall investigate any crash involving personal injury or a fatality.

SECTION 8. A Civilian Traffic Investigator shall have no authority to arrest or issue criminal process. They shall not be issued a weapon of any type.

SECTION 9. A Civilian Traffic Investigator shall have the same authority as a law enforcement officer to tow or remove a vehicle that is obstructing a public street or highway.

SECTION 10. Not later than December 31, 2007, the City of Fayetteville shall deliver to the House Appropriations Subcommittee on Justice and Public Safety and the Senate Committee on Appropriations on Justice and Public Safety a written report on the training and use of Civilian Traffic Investigators for the period commencing on the effective date of this act and concluding November 1, 2007.

SECTION 11. This act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒Committee Substitute for
HB 2041 A BILL TO BE ENTITLED AN ACT TO ALLOW THE CITY OF FAYETTEVILLE TO USE CIVILIAN TRAFFIC INVESTIGATORS TO INVESTIGATE PROPERTY DAMAGE CRASHES.

☒ With a favorable report as to Committee Substitute Bill 2, unfavorable as to Committee Substitute Bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 1

HOUSE BILL 2880

Short Title:	No Prayer for Judgment/Bus Stop Arm Violation.	(Public)
Sponsors:	Representatives Folwell; Glazier, Pate, and Wiley.	
Referred to:	Judiciary IV.	

June 19, 2006

A BILL TO BE ENTITLED

AN ACT TO PREVENT A PERSON CONVICTED OF PASSING A STOPPED SCHOOL BUS FROM RECEIVING A PRAYER FOR JUDGMENT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(e) reads as rewritten:

"(e) Except as provided in subsection (g) of this section, any person violating this section shall be guilty of a Class 1 misdemeanor. A person convicted of violating this section shall not receive a "Prayer for Judgment Continued" under any circumstances."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H D

HOUSE BILL 2880
PROPOSED COMMITTEE SUBSTITUTE H2880-CSSV-86 [v.1]

6/27/2006 9:55:58 AM

Short Title: No Prayer for Judgment/Bus Stop Arm Violation. (Public)

Sponsors:

Referred to:

June 19, 2006

A BILL TO BE ENTITLED

AN ACT TO PREVENT A PERSON WHO IS GUILTY OF PASSING A STOPPED SCHOOL BUS FROM RECEIVING A PRAYER FOR JUDGMENT CONTINUED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 20-217(e) reads as rewritten:

"(e) Except as provided in subsection (g) of this section, any person violating this section shall be guilty of a Class 1 misdemeanor. A person who violates subsection (a) of this section shall not receive a prayer for judgment continued under any circumstances."

SECTION 2. This act is effective September 1, 2006, and applies to offenses committed on or after that date.

HOUSE BILL 2880:
No Prayer for Judgment/Bus Stop Arm Violation

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 27, 2006
Introduced by:	Rep. Folwell	**Summary by:**	Trina Griffin
Version:	First Edition		Committee Counsel

SUMMARY: The Proposed Committee Substitute for House Bill 2880 would prohibit a judge from entering a prayer for judgment continued when sentencing a person who is guilty of passing a stopped school bus, effective for offenses committed on or after September 1, 2006.

CURRENT LAW:

Passing a Stopped School Bus

A driver who approaches a school bus from any direction on the same street when the bus is displaying its mechanical stop signal or flashing red lights, and the bus is stopped for the purpose of receiving or discharging passengers, shall not move, pass, or attempt to pass the school bus until after the mechanical sign has been withdrawn, the flashing lights have been turned off, and the bus has started to move. This statute applies to both public school buses and private school buses that transport children, and to school buses that transport senior citizens.

A person who violates this provision is guilty of a Class 1 misdemeanor. If a person violates this provision and causes serious bodily injury, it is a Class I felony. The minimum sentence for a Class 1 misdemeanor is 1-45 days community punishment, and the maximum punishment is 1-120 days active. The court may also impose a fine in its discretion. The minimum sentence for a Class I felony is 3-4 months, suspended, and the maximum is 12 months active.

Prayer for Judgment Continued

A "prayer for judgment continued" (PJC) is not defined in the North Carolina statutes. With a PJC, the court accepts the defendant's guilty plea or finds the defendant guilty after trial but does not impose a sentence or enter judgment. Instead, the court indefinitely postpones—or continues—judgment. If the court continues prayer for judgment for a specified period of time and, if within that time, the defendant commits another offense, the State may seek the imposition of a sentence for the original offense.

If the PJC does not contain conditions amounting to punishment, no further action is contemplated in the case, and it is not considered a conviction. For example, a PJC that requires a defendant to pay court costs or not to violate the law is not considered a conviction. If, however, the PJC is accompanied by conditions amounting to punishment, such as a fine or imprisonment, the courts generally disregard the PJC label and treat the order as a final judgment and conviction.

The court may not enter a PJC where a punishment is statutorily mandated for the offense, such as DWI.

BILL ANALYSIS: The Proposed Committee Substitute for HB 2880 would prohibit a judge from entering a prayer for judgment continued when sentencing a person who is guilty of passing a stopped school bus.

EFFECTIVE DATE: This act would become effective September 1, 2006, and applies to offenses committed on or after that date.

H2880e1-SMSV

Supporters of HB 2880
NO PJC/BUS STOP-ARM VIOLATIONS

Sponsored by
Representative Dale Folwell

- **Chief Justice I. Beverly Lake**
- **NC Department of Crime Control and Public Safety**
- **NC Insurance Commissioner Long**
- **NC Highway Patrol**
- **NC Sheriffs' Association**

Thanks for your vote!
Representative Dale Folwell

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
HB 2880 A BILL TO BE ENTITLED AN ACT TO PREVENT A PERSON CONVICTED OF PASSING A STOPPED SCHOOL BUS FROM RECEIVING A PRAYER FOR JUDGMENT.

☒ With a favorable report as to the committee substitute bill, which changes the title, unfavorable as to the original bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

JUNE 28, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lee Wimin	NCSBA
Alex Miller	Covenant with NC's Children
TIFFANIE SWEETY	Fayetteville Police Dept.
TOM McCARTHY	Fayetteville Police
Colleen Kochanek	NCACP / NCLEOA
Johanna Reese	DOT
Derek Graham	DPI
Kevin Hicks	PSNC Energy
Bill McAulay	PSNC Energy
Gail Peck	PSNC Energy
Bryan Ball	Fiscal Research

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

JUNE 28, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jo McCants	AOC
Erk Root	NCFPC
Jami Fitzgerald	NCFPC
Wayne Goodwin	DOT
Doug Miskiewicz	Capstrat

House Pages

JUDICIARY II

Name Of Committee: _____ Date: JUNE 27, 2006

1. Name: Mary Stewart Robins
   County: Forsyth
   Sponsor: Dale Folwell
2. Name: Emily Buffkin
   County: Forsyth
   Sponsor: Larry Brown
3. Name: Colby Alexander
   County: Buncombe
   Sponsor: Ray Rapp
4. Name: David Rusher
   County: Wake
   Sponsor: Grier Martin
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED HINES
2. Name: ~~MARK CONE~~ EARL COTES
3. Name: _____
4. Name: _____
5. Name: _____

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, June 29, 2006

The House Committee on Judiciary IV met on Thursday, June 29, 2006 in Room 415 of the Legislative Office Building at 9:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Carolyn Justus, Grier Martin, Karen Ray, Tim Spear, Ex-Officio Member Representative Pete Cunningham and staff attorneys Trina Griffin and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration List is attached and made part of these minutes.

Chairman Weiss welcomed pages and guests to the meeting and announced that Senate Committee Substitute Bill 1216 – DISCLOSURE OF INFORMATION/ABUSE/NEGLECT, would be the first bill heard. Representative Martin moved to accept the Proposed House Committee Substitute for discussion. The motion was adopted. Senator Boseman explained the bill and said there are no costs associated with the bill and there is no opposition to the bill. Jennifer McGinnis, staff attorney, went through the Proposed House Committee Substitute and explained the changes. Representative Glazier offered an amendment to make a technical change. Ms. Selena Barrier, Executive Director, Child Fatality Task Force, spoke in favor of the bill. Ms. Chris Sinha, Assistant Attorney General, Department of Health and Human Services, Division of Social Services, answered questions and spoke in favor of the bill. Representative Glazier moved to adopt the amendment. The motion was adopted. Ms. Lee Ann Winner, representing the North Carolina School Board Association; North Carolina School Board Attorneys, also answered questions on the bill. Discussion followed. Representative Justus moved to give a favorable report to the Proposed House Committee Substitute, as amended, unfavorable to the Senate Committee Substitute bill. The motion was adopted.

Senate Bill 1289 – CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED, which came to the committee as a Senate Committee Substitute, was next on the agenda. Representative Spear moved to adopt a Proposed House Committee Substitute for discussion; the motion was adopted. Senator Bingham, sponsor, explained the bill. Trina Griffin, staff attorney, went through the bill and the proposed House Committee Substitute. Mr. Tom Vitaglione, Sr. Fellow with Action for Children and Co-Chair of the Child Fatality Task Force spoke in favor of the bill. He said that the bill is meant to be educational rather than punitive, and that the National Safety Board make this their number 1 recommendation to all states. Representative Glazier put forth an amendment to clarify the definition of mobile telephone. The motion was adopted. Discussion followed. Former Representative Wayne Goodwin, Assistant Commission, NC Department of Insurance and Mr. Joe Stuart, Insurance Federation of North Carolina, spoke in support of the bill. Representative Spear asked if failure to appear or failure to comply, which he feels need to be in the bill, are covered in statutes. If not, he said he would be comfortable with amending the bill on the floor of the House, and that he supports the bill. Representative Martin moved to give a favorable report to the Proposed House Committee Substitute, as amended, unfavorable to the Senate Committee Substitute bill. The motion was adopted.

The meeting was adjourned at 9:50 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Agenda, SB 1216: Copy of Bill, Bill Analysis, Proposed House Committee Substitute, Amendment, House Committee Substitute, Committee Report; SB 1289: Copy of Bill, Bill Analysis, Proposed House Committee Substitute, Amendment, House Committee Substitute, Committee Report, Visitor Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, June 29, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

SB 1216 - DSS DISCLOSURE OF INFORMATION/ABUSE/NEGLECT.
Senator Boseman

SB 1289 - CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED.
Senator Bingham

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 1216

Judiciary I Committee Substitute Adopted 6/19/06
Third Edition Engrossed 6/20/06

Short Title: DSS Disclosure of Information/Abuse/Neglect. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT ALLOWING LOCAL DEPARTMENTS OF SOCIAL SERVICES TO SHARE CONFIDENTIAL INFORMATION WITH OTHER CHILD PROTECTION ORGANIZATIONS WHEN THE CONFIDENTIAL INFORMATION IS NEEDED TO PROTECT A CHILD FROM ABUSE AND NEGLECT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the

department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities."

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

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1216-CSRI-25 [v.2]

A BILL TO BE ENTITLED

AN ACT TO (1) ALLOW LOCAL DEPARTMENTS OF SOCIAL SERVICES TO SHARE CONFIDENTIAL INFORMATION WITH OTHER CHILD PROTECTION ORGANIZATIONS WHEN THE CONFIDENTIAL INFORMATION IS NEEDED TO PROTECT A CHILD FROM ABUSE AND NEGLECT, AND (2) ALLOW ENTITIES DESIGNATED BY THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO SHARE INFORMATION WITH A LOCAL DEPARTMENT OF SOCIAL SERVICES THAT IS RELEVANT TO AN ASSESSMENT OF REPORTS OF CHILD ABUSE, NEGLECT, AND DEPENDENCY BY A LOCAL DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the

General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities."

SECTION 2. G.S. 7B-3100(a) reads as rewritten:

"(a) The Department, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of this section. Agencies so designated shall share with one another, upon request, information that is in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, if a petition is filed, or the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to share information" include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney."

SECTION 3. This act is effective when it becomes law.

SENATE BILL 1216:
DSS Disclosure of Information/Abuse/Neglect

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	June 28, 2006
Introduced by:	Sen. Boseman	**Summary by:**	Jennifer McGinnis
Version:	PCS to Third Edition S1216-CSRI		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute (PCS) for Senate Bill 1216 would: (i) require a department of social services to share information received by the department in connection with abuse, neglect, and dependency reports and assessments currently held in confidence, with any federal, State or local governmental entity or its agent that needs confidential information to protect a juvenile from abuse and neglect; and (ii) authorize designated agencies to share information relevant to any assessment of a report of child abuse, neglect, or dependency, or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services.***

CURRENT LAW: Currently, reports of abuse, neglect or dependency, received by the department of social services, including information obtained as part of the department's investigative assessment and evaluation, are required to be held in strictest confidence by the department. This includes the identity of the person who reports the abuse, neglect or dependency. There are no exceptions to this requirement for confidentiality.

BILL ANALYSIS: Senate Bill 1216 would amend the confidentiality provisions of the abuse, neglect and dependency reporting, investigative, and assessment law to require departments of social services to disclose confidential information to any federal, State or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect.

CHANGES MADE BY THE PCS: The PCS would amend G.S. 7B-3100(a) (Disclosure of information about juveniles) to authorize entities designated by the Department of Juvenile Justice and Delinquency Prevention to share information with each other that is relevant to any assessment of a report of child abuse, neglect, or dependency, or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services.

Federal law (the Family Educational Rights and Privacy Act (FERPA)) requires that state law specifically provide in statute when schools can release student information. If the statutes do not expressly allow it, then schools are prohibited from sharing student information. (See 34 CFR Sec. 99.31(a)(5).)

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

O. Walker Reagan, counsel to Senate Judiciary I, substantially contributed to this summary.

S1216e3-SMRI-CSRI

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 6/28/06

S. B. No. 1216 Amendment No. _____ (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

(Rep.) Glazier

Sen.)

1 moves to amend the bill on page 2, line 28

2 ( ) WHICH CHANGES THE TITLE

3 by rewriting that line to read:

4

5 " the local department of social services, or

6 if a petition is filed ~~and~~ when the juvenile is no

7 longer" ~~subject~~

8

9

10

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 1216

Judiciary I Committee Substitute Adopted 6/19/06

Third Edition Engrossed 6/20/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1216-PCS65617-RI-25

Short Title: DSS Disclosure of Information/Abuse/Neglect. (Public)

Sponsors:

Referred to:

May 10, 2006

A BILL TO BE ENTITLED

AN ACT TO (1) ALLOW LOCAL DEPARTMENTS OF SOCIAL SERVICES TO SHARE CONFIDENTIAL INFORMATION WITH OTHER CHILD PROTECTION ORGANIZATIONS WHEN THE CONFIDENTIAL INFORMATION IS NEEDED TO PROTECT A CHILD FROM ABUSE AND NEGLECT, AND (2) ALLOW ENTITIES DESIGNATED BY THE DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION TO SHARE INFORMATION WITH A LOCAL DEPARTMENT OF SOCIAL SERVICES THAT IS RELEVANT TO AN ASSESSMENT OF REPORTS OF CHILD ABUSE, NEGLECT, AND DEPENDENCY BY A LOCAL DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-302(a) reads as rewritten:

"(a) When a report of abuse, neglect, or dependency is received, the director of the department of social services shall make a prompt and thorough assessment, using either a family assessment response or an investigative assessment response, in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the director shall immediately, but no later than 24 hours after receipt of the report, initiate the assessment. When the report alleges neglect or dependency, the director shall initiate the assessment within 72 hours following receipt of the report. When the report alleges abandonment, the director shall immediately initiate an assessment, take appropriate steps to assume temporary custody of the juvenile, and take appropriate steps to secure an order for nonsecure custody of the juvenile. The assessment and evaluation shall include a visit to the place where the juvenile resides, except when the report alleges

abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes. When a report alleges abuse or neglect in a child care facility as defined in Article 7 of Chapter 110 of the General Statutes, a visit to the place where the juvenile resides is not required. When the report alleges abandonment, the assessment shall include a request from the director to law enforcement officials to investigate through the North Carolina Center for Missing Persons and other national and State resources whether the juvenile is a missing child. All information received by the department of social services, including the identity of the reporter, shall be held in strictest confidence by the department. However, the department of social services shall disclose confidential information to any federal, State, or local governmental entity or its agent needing confidential information to protect a juvenile from abuse and neglect. Any confidential information disclosed to any federal, State, or local governmental entity, or its agent, under this subsection shall remain confidential with the other governmental entity, or its agent, and shall only be redisclosed by the governmental entity or its agent for purposes directly connected with carrying out the governmental entity's or agent's mandated responsibilities."

SECTION 2. G.S. 7B-3100(a) reads as rewritten:

"(a) The Department, after consultation with the Conference of Chief District Court Judges, shall adopt rules designating certain local agencies that are authorized to share information concerning juveniles in accordance with the provisions of this section. Agencies so designated shall share with one another, upon request, information that is in their possession that is relevant to any assessment of a report of child abuse, neglect, or dependency or the provision or arrangement of protective services in a child abuse, neglect, or dependency case by a local department of social services pursuant to the authority granted under Chapter 7B of the General Statutes or to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined, or delinquent and shall continue to do so until the protective services case is closed by the local department of social services, or if a petition is filed when the juvenile is no longer subject to the jurisdiction of juvenile court. Agencies that may be designated as "agencies authorized to share information" include local mental health facilities, local health departments, local departments of social services, local law enforcement agencies, local school administrative units, the district's district attorney's office, the Department of Juvenile Justice and Delinquency Prevention, and the Office of Guardian ad Litem Services of the Administrative Office of the Courts. Any information shared among agencies pursuant to this section shall remain confidential, shall be withheld from public inspection, and shall be used only for the protection of the juvenile and others or to improve the educational opportunities of the juvenile, and shall be released in accordance with the provisions of the Family Educational and Privacy Rights Act as set forth in 20 U.S.C. § 1232g. Nothing in this section or any other provision of law shall preclude any other necessary sharing of information among agencies. Nothing herein shall be deemed to require the disclosure or release of any information in the possession of a district attorney."

SECTION 3. This act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒Committee Substitute for
SB 1216 A BILL TO BE ENTITLED AN ACT ALLOWING LOCAL DEPARTMENTS OF SOCIAL SERVICES TO SHARE CONFIDENTIAL INFORMATION WITH OTHER CHILD PROTECTION ORGANIZATIONS WHEN THE CONFIDENTIAL INFORMATION IS NEEDED TO PROTECT A CHILD FROM ABUSE AND NEGLECT.

☒ With a favorable report as to House committee substitute bill, which changes the title, unfavorable as to Senate committee substitute bill -1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 3

SENATE BILL 1289
Judiciary II Committee Substitute Adopted 6/6/06
Third Edition Engrossed 6/8/06

Short Title: Cell Phone Use by Drivers Under 18 Prohibited. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.3. Unlawful use of a mobile phone; persons under 18 years of age.**

(a) Definitions. – For purposes of this section, the following terms shall mean:

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mails, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand as well as (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone, hands-free mobile telephone technology, or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent or legal guardian.

(e) Violation. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). A violation of this section shall be a waivable infraction. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section. Upon waiver of responsibility, or being found responsible by a court of competent jurisdiction, the clerk of court shall notify the Division of Motor Vehicles and provide to the Division any information the Division requires to impose the penalty.

(f) Penalty. – Notwithstanding G.S. 20-11(l), the penalty for a violation of this section shall require a drivers license permit holder or a provisional licensee to remain for an additional six months at the same graduated licensing level that the permittee or the licensee was at the time the violation occurred, or until the permittee or licensee reaches 18 years of age, whichever occurs first."

SECTION 2. G.S. 20-11(c) reads as rewritten:

"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway."

SECTION 3. G.S. 20-11(d) reads as rewritten:

"(d) Level 2. – A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 4. G.S. 20-11(e) reads as rewritten:

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.

(5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway."

SECTION 5. G.S. 20-11(f) reads as rewritten:

"(f) Level 3. – A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail."

SECTION 6. S. 20-11(g) reads as rewritten:

"(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license."

SECTION 7. G.S. 20-11(l) reads as rewritten:

"(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. ~~Failure~~ Except as provided in G.S. 20-137.3(f), failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subsection ~~(e)~~(e)(1)-(5) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with seating and occupancy limitations or mobile telephone use provided for in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SENATE BILL 1289:
Cell Phone Use by Drivers Under 18 Prohibited

BILL ANALYSIS

Committee:	Senate Judiciary II	**Date:**	June 29, 2006
Introduced by:	Sen. Bingham	**Summary by:**	Trina Griffin
Version:	PCS to Third Edition S1289-CSSV-87		Committee Counsel

SUMMARY: ***Senate Bill 1289 would prohibit persons under 18 years of age from using a mobile telephone while operating a motor vehicle on a public street or highway or public vehicular area. A person who violates this law would be fined $25 and have his or her learner's permit or Level 2 provisional license extended for an additional 6 months or until the person turned 18. No insurance points, drivers license points or court costs would be assessed.***

The act would become effective December 1, 2006, and apply to offenses committed on or after that date.

The Proposed Committee Substitute makes only stylistic and conforming changes.

CURRENT LAW: There are no statutory restrictions in North Carolina regarding the use of a mobile telephone while operating a motor vehicle.

In 1997, North Carolina adopted a graduated drivers license law (G.S. 20-11). It requires that if a person is under the age of 18, driving privileges are granted first on a limited basis and then expanded over time. The process involves 3 levels:

- Level 1 – Driving with a limited learner's permit.
- Level 2 – Driving with a limited provisional license.
- Level 3 – Driving with a full provisional license.

Persons who are at least 15 years of age, but not yet 18 years old must obtain a limited learner's permit. The permit allows the person to operate a motor vehicle if there is a supervising driver in the front seat of the car, the driver has the permit on his or her person while driving, and every person in the auto is wearing a safety belt. For the first 6 months of the permit, the driver may only operate an automobile between 5 a.m. and 9 p.m. The person must hold the permit for at least 12 months before being eligible to obtain a limited provisional (Level 2) license.

A person may obtain a limited provisional license if he or she has not been convicted of a moving violation or seat belt infraction during the preceding six months, passes a road test, and maintains passing grades in school or has a diploma or its equivalent. A person holding a limited provisional license may operate a motor vehicle between the hours of 5 a.m. and 9 p.m., or while driving to and from work or to and from certain volunteer EMS activities. There may be no more than one passenger under the age of 21 in the vehicle if there is no supervising driver present, although there is no limit on the number of siblings under the age of 21 who may be in the car. Finally, everyone in the vehicle must be wearing a seat belt.

If a person holds a Level 2 license for 6 months, has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months, and has passing grades or obtained a high school diploma, the person may obtain a full provisional (Level 3) license. There are no

restrictions on a Level 3 license except that all persons in the vehicle must wear a seat belt. A person as young as 16 years and 6 months of age may obtain a Level 3 license.

BILL ANALYSIS: Senate Bill 1289 would prohibit a person under the age of 18 from using a mobile telephone while operating a motor vehicle on a public street or highway or public vehicular area. The prohibition would not apply to a stationary vehicle. The prohibition would extend to both handheld and hands-free phones, as well as other technology associated with a mobile telephone such as emails, games, or digital cameras associated with the phone. The prohibition would not extend to the use of a mobile telephone to call (1) the parent or guardian of the motor vehicle operator, or (2) in an emergency situation, a 911 operator, a hospital, doctor's office, or health clinic, an ambulance service, a fire department or a law enforcement agency.

A violation would be an infraction and the driver would be assessed a fine of $25. The driver would not have to pay court costs, and would not be assessed insurance or drivers license points. The person would have to remain for an additional 6 months at their current level of graduated license. As a practical matter, there are no restrictions on Level 3, full provisional licenses, so a person with a Level 3 drivers license who is found responsible of violating the prohibition against using a mobile telephone would have to pay court costs, but would not experience any change in their driving privileges.

BACKGROUND: The bill is a recommendation of the North Carolina Child Fatality Task Force.

According to information provided by the Insurance Institute for Highway Safety, as of July of 2005, 10 states restrict the use of mobile telephones by teens in the states' graduated licensing system. These states include: Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, New Jersey, Tennessee, and Texas.

Kory Goldsmith, counsel to Senate Judiciary II, substantially contributed to this summary.

S1289e3-SMSV-CSSV-87

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

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SENATE BILL 1289

Judiciary II Committee Substitute Adopted 6/6/06
Third Edition Engrossed 6/8/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1289-CSSV-87 [v.3]

6/29/2006 8:50:17 AM

Short Title: Cell Phone Use by Drivers Under 18 Prohibited. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.**

(a) Definitions. – The following definitions apply in this section:

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public

switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone, hands-free mobile telephone technology, or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent or legal guardian.

(e) Violation. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section. Upon admission of responsibility, or being found responsible by a court of competent jurisdiction, the clerk of court shall notify the Division of Motor Vehicles and provide to the Division any information the Division requires to impose the penalty.

(f) Penalty. – The penalty for a violation of this section shall require a drivers license permit holder or a provisional licensee to remain for an additional six months at the same graduated licensing level that the permittee or the licensee was at the time the violation occurred, or until the permittee or licensee reaches 18 years of age, whichever occurs first."

SECTION 2. G.S. 20-11(c) reads as rewritten:

"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be

restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway or public vehicular area."

SECTION 3. G.S. 20-11(d) reads as rewritten:

"(d) Level 2. – A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 4. G.S. 20-11(e) reads as rewritten:

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age,

who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.

(5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area."

SECTION 5. G.S. 20-11(f) reads as rewritten:

"(f) Level 3. – A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail."

SECTION 6. S. 20-11(g) reads as rewritten:

"(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license."

SECTION 7. G.S. 20-11(*l*) reads as rewritten:

"(*l*) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with the restriction regarding the use of a mobile telephone while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars ($25.00) and subjects the permit holder or provisional licensee to the penalty provided in G.S. 20-137.3(f). Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subsection ~~(e)~~(e)(1)-(5) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No

drivers license points or insurance surcharge shall be assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE CSSV-87

Rep.)
) Glazier
Sen.)

moves to amend the bill on page 2, line 5-6

( ) WHICH CHANGES THE TITLE

by rewriting the lines to read:

"vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in"

SIGNED R. B. Glazier

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1289

Judiciary II Committee Substitute Adopted 6/6/06

Third Edition Engrossed 6/8/06

PROPOSED HOUSE COMMITTEE SUBSTITUTE S1289-PCS75554-SV-87

Short Title: Cell Phone Use by Drivers Under 18 Prohibited. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.**

(a) Definitions. – The following definitions apply in this section:

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public

switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent or legal guardian.

(e) Violation. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section. Upon admission of responsibility, or being found responsible by a court of competent jurisdiction, the clerk of court shall notify the Division of Motor Vehicles and provide to the Division any information the Division requires to impose the penalty.

(f) Penalty. – The penalty for a violation of this section shall require a drivers license permit holder or a provisional licensee to remain for an additional six months at the same graduated licensing level that the permittee or the licensee was at the time the violation occurred, or until the permittee or licensee reaches 18 years of age, whichever occurs first."

SECTION 2. G.S. 20-11(c) reads as rewritten:

"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway or public vehicular area."

SECTION 3. G.S. 20-11(d) reads as rewritten:

"(d) Level 2. – A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 4. G.S. 20-11(e) reads as rewritten:

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.

(5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area."

SECTION 5. G.S. 20-11(f) reads as rewritten:

"(f) Level 3. – A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail."

SECTION 6. G.S. 20-11(g) reads as rewritten:

"(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license."

SECTION 7. G.S. 20-11(l) reads as rewritten:

"(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with the restriction regarding the use of a mobile telephone while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars ($25.00) and subjects the permit holder or provisional licensee to the penalty provided in G.S. 20-137.3(f). Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subdivisions (1), (2), (3), (4), and (5) of subsection (c) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No drivers license points or insurance surcharge shall be

assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ Senate Committee Substitute for
SB 1289 A BILL TO BE ENTITLED AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

☒ With a favorable report as to House committee substitute bill , which changes the title, unfavorable as to Senate committee substitute bill.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRIAN LEWIS	Covenant w/ NC's Children
LORI ANN HARRIS	LATA
Rob Savitt	NC ACC
JACK OZERET	Womble
Doug Hall	Gov's office
Kevin G. Leonard	NCSR
Leanne Winner	NCSBA
Wayne Goodwin	DOI
Jon Stewart	IFNC
Arthur Goodwin	UNC Highway Safety Research Center
Mark Travick	Don Beason Intern

VISITOR REGISTRATION SHEET

JUDICIARY IV — June 29, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Vitagliano	ACF
Selena Bernier	Child Fatality Task Force
Jane Smith	DHHS
Chris Sinha	A.G. for DHHS
Cameron Convisano	Daily Bulletin
Rebekah Goncarov	ACLU-NC
Eric Hines	Coalition for Lobby Reform
Jeff Walston	YAIO
Hoss Bowen	NCATL

House Pages

Name Of Committee: J IV Date: 6/29/06

1. Name: Devin Weiss
   County: Wake
   Sponsor: Speaker Black
2. Name: Jenna Davis
   County: Durham
   Sponsor: Mickey Michaux
3. Name: Mary Stewart Robins
   County: Forsyth
   Sponsor: Dale Folwell
4. Name: Kara Jenkins
   County: Forsyth
   Sponsor: Bill McGee
5. Name: Ryan Griffin
   County: Catawba
   Sponsor: Jean Preston

Sgt-At-Arms

1. Name: Mark Cone
2. Name: Fred Mines
3. Name: Will Heath
4. Name:
5. Name:

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, July 6, 2006

The House Committee on Judiciary IV met on Thursday, July 6, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bryan Holloway, Grier Martin, Earline Parmon, Tim Spear, and staff attorneys Trina Griffin, Steve Rose and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration List is attached and made part of these minutes.

Chairman Weiss called the meeting to order and welcomed Senator Bingham and Representative Clary to the meeting. She announced that Senate Bill 1289, CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED was back before the Committee. The bill, which received a favorable report on the Proposed House Committee Subcommittee at the Judiciary IV meeting last week, was re-referred to Judiciary IV to hear technical changes that needed to be made on the bill. Chairman Weiss introduced Senator Bingham, bill sponsor. Senator Bingham stated that the technical changes were needed to comply with present seat belt law. Representative Kiser moved to accept a Proposed Committee Substitute for discussion. The motion was adopted. Trina Griffin, staff attorney, explained the bill. The changes in the proposed committee substitute were brought to the attention of staff by the Division of Motor Vehicles; these changes bring the bill in line with the other restrictions that are on graduated driver's licenses. Discussion followed. Mr. Tom Vitaglione, Senior Fellow and Co-Chair of the NC Child Fatality Task Force, said that when studies are put together, as was done by the National Highway Transportation Safety Board, the number one priority for America should be taking care of the cell phone issue, especially for teenagers. He also said that versions of this bill are in every legislature across the United States; it is an educational bill; it is self-enforced and crashes went down 34% right after the law was passed. Senator Bingham said he has had numerous calls and letters from parents requesting this law. Representative Parmon moved to give the Proposed Committee Substitute a favorable report, unfavorable to the original. The motion was adopted.

The meeting was adjourned at 10:35 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; Copy of Bill, Proposed House Committee Substitute, Bill Analysis, House Committee Substitute, Committee Report; Visitors Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Thursday, July 6, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

SB 1289 - CELL PHONE USE BY DRIVERS UNDER 18 PROHIBITED.
Senator Bingham

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 4

SENATE BILL 1289

Judiciary II Committee Substitute Adopted 6/6/06
Third Edition Engrossed 6/8/06
House Committee Substitute Favorable 6/29/06

Short Title: Cell Phone Use by Drivers Under 18 Prohibited. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.**

(a) Definitions. – The following definitions apply in this section:

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public

switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent or legal guardian.

(e) Violation. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section. Upon admission of responsibility, or being found responsible by a court of competent jurisdiction, the clerk of court shall notify the Division of Motor Vehicles and provide to the Division any information the Division requires to impose the penalty.

(f) Penalty. – The penalty for a violation of this section shall require a drivers license permit holder or a provisional licensee to remain for an additional six months at the same graduated licensing level that the permittee or the licensee was at the time the violation occurred, or until the permittee or licensee reaches 18 years of age, whichever occurs first."

SECTION 2. G.S. 20-11(c) reads as rewritten:

"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

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(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

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assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1289

Judiciary II Committee Substitute Adopted 6/6/06
Third Edition Engrossed 6/8/06
House Committee Substitute Favorable 6/29/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1289-CSSV-90 [v.1]

7/5/2006 2:38:27 PM

Short Title: Cell Phone Use by Drivers Under 18 Prohibited. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

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(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent or legal guardian.

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"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

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(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

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"(d) Level 2. – A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

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(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

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(4) Has a driving eligibility certificate or a high school diploma or its equivalent."

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(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.

(5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area."

SECTION 5. G.S. 20-11(f) reads as rewritten:

"(f) Level 3. – A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail."

SECTION 6. G.S. 20-11(g) reads as rewritten:

"(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license."

SECTION 7. G.S. 20-11(l) reads as rewritten:

"(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with the restriction regarding the use of a mobile telephone while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars ($25.00). Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subdivisions (1), (2), (3), (4), and (5) of subsection (c) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

SENATE BILL 1289:
Cell Phone Use by Drivers Under 18 Prohibited

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	July 6, 2006
Introduced by:	Sen. Bingham	**Summary by:**	Trina Griffin
Version:	PCS to Fourth Edition S1289-CSSV-90		Committee Counsel

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1289, which passed House Judiciary IV on June 29, 2006, prohibited persons less than 18 years of age from using a mobile telephone while operating a motor vehicle on a public street or highway or public vehicular area. A person who violates this law would be fined $25 and have his or her learner's permit or Level 2 provisional license extended for an additional 6 months or until the person turned 18. No insurance points, drivers license points or court costs would be assessed.***

The current Proposed Committee Substitute differs by removing the additional 6-month penalty. Instead, a person would not be eligible to advance to the next graduated drivers license level if the person has been convicted of a mobile phone restriction within the previous 6 months.

CURRENT LAW: There are no statutory restrictions in North Carolina regarding the use of a mobile telephone while operating a motor vehicle.

In 1997, North Carolina adopted a graduated drivers license law (G.S. 20-11). It requires that if a person is under the age of 18, driving privileges are granted first on a limited basis and then expanded over time. The process involves 3 levels:

- Level 1 – Driving with a limited learner's permit.
- Level 2 – Driving with a limited provisional license.
- Level 3 – Driving with a full provisional license.

Persons who are at least 15 years of age, but not yet 18 years old must obtain a limited learner's permit. The permit allows the person to operate a motor vehicle if there is a supervising driver in the front seat of the car, the driver has the permit on his or her person while driving, and every person in the auto is wearing a safety belt. For the first 6 months of the permit, the driver may only operate an automobile between 5 a.m. and 9 p.m. The person must hold the permit for at least 12 months before being eligible to obtain a limited provisional (Level 2) license.

A person may obtain a limited provisional license if he or she has not been convicted of a moving violation or seat belt infraction during the preceding six months, passes a road test, and maintains passing grades in school or has a diploma or its equivalent. A person holding a limited provisional license may operate a motor vehicle between the hours of 5 a.m. and 9 p.m., or while driving to and from work or to and from certain volunteer EMS activities. There may be no more than one passenger under the age of 21 in the vehicle if there is no supervising driver present, although there is no limit on the number of siblings under the age of 21 who may be in the car. Finally, everyone in the vehicle must be wearing a seat belt.

If a person holds a Level 2 license for 6 months, has not been convicted of a motor vehicle moving violation or seat belt infraction during the preceding six months, and has passing grades or obtained a

high school diploma, the person may obtain a full provisional (Level 3) license. There are no restrictions on a Level 3 license except that all persons in the vehicle must wear a seat belt. A person as young as 16 years and 6 months of age may obtain a Level 3 license.

BILL ANALYSIS: Senate Bill 1289 would prohibit a person under the age of 18 from using a mobile telephone while operating a motor vehicle on a public street or highway or public vehicular area. The prohibition would not apply to a stationary vehicle. The prohibition would extend to both handheld and hands-free phones, as well as other technology associated with a mobile telephone such as emails, games, or digital cameras associated with the phone. The prohibition would not extend to the use of a mobile telephone to call (1) the parent or guardian of the motor vehicle operator, or (2) in an emergency situation, a 911 operator, a hospital, doctor's office, or health clinic, an ambulance service, a fire department or a law enforcement agency.

A violation would be an infraction and the driver would be assessed a fine of $25. The driver would not have to pay court costs, and would not be assessed insurance or drivers license points. The person would have to remain for an additional 6 months at their current level of graduated license. As a practical matter, there are no restrictions on Level 3, full provisional licenses, so a person with a Level 3 drivers license who is found responsible of violating the prohibition against using a mobile telephone would have to pay court costs, but would not experience any change in their driving privileges.

PROPOSED COMMITTEE SUBSTITUTE (7/6/06): A finding of responsibility for a mobile phone violation under this proposed committee substitute would have the same result on graduated drivers license privileges as a conviction or finding of responsibility for any other motor vehicle moving violation or seat belt infraction. This result was not the case, however, under the PCS that passed House JIV on June 29, 2006.

The bill passed by House Judiciary IV on June 29 required that a person remain for an additional six months at the level the person was at when the violation occurred. Thus, if a person was convicted of a mobile phone violation at any time during the Level 1 license, the person would remain at Level 1 for 18 months rather than 12 months. Under this PCS, only a person with a violation in the last 6 months of his or her Level 1 license would be negatively affected, and the additional length of time required to be spent at Level 1 would depend on when the person was found responsible. (For example, if the person was convicted in month 7 of Level 1, the person would be at Level 1 for one additional month; if convicted in month 8, an additional 2 months, etc.) The reason for this outcome is because, under the current PCS, a person may not advance to the next level unless the person has no motor vehicle violations within the last 6 months. It establishes a 6-month look-back period rather than adding 6 months prospectively.

Under the previous bill, a person found responsible in month 3 of Level 2, for example, would remain at Level 2 for 12 months instead of 6 months. Under this PCS, the same offense would result in the person remaining at Level 2 for only 9 months. Moreover, the previous bill required the person to remain at the level the person was at when the violation occurred, but the bill provided no mechanism by which DMV was to revoke or cancel the current level license and return the person to the previous level license. For example, if a violation occurred while at Level 1, and the person advanced to Level 2 before being found responsible, and then the person was later found responsible, DMV would be required to revoke the Level 2 license and reinstate the Level 1 license with an additional 6 months as a penalty.

Under the previous bill and under this PCS, there is no practical consequence on the driving privilege for a violation while at Level 3 other than the $25 fine.

Under this bill, a person may avoid any drivers license consequence depending on when the violation and resulting conviction or finding occurs. For example, a person with a violation in month 6 of Level 1 will suffer no additional time at Level 1, whereas a person with a violation in month 9 will spend an additional 3 months at Level 1. A person with a violation in month 10 could continue the case until the person has attained Level 2 and spend no additional time at Level 1. Under the previous bill, a finding of responsibility in any of these months would have resulted in the person remaining at Level 1 for 18 months.

BACKGROUND: The bill is a recommendation of the North Carolina Child Fatality Task Force.

According to information provided by the Insurance Institute for Highway Safety, as of July of 2005, 10 states restrict the use of mobile telephones by teens in the states' graduated licensing system. These states include: Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, New Jersey, Tennessee, and Texas.

Kory Goldsmith, counsel to Senate Judiciary II, substantially contributed to this summary.

S1289e4-SMSV-CSSV-90

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1289

Judiciary II Committee Substitute Adopted 6/6/06
Third Edition Engrossed 6/8/06
House Committee Substitute Favorable 6/29/06
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1289-PCS35445-SV-90

Short Title: Cell Phone Use by Drivers Under 18 Prohibited. (Public)

Sponsors:

Referred to:

May 11, 2006

A BILL TO BE ENTITLED

AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-137.3. Unlawful use of a mobile phone by persons under 18 years of age.**

(a) Definitions. – The following definitions apply in this section:

(1) Additional technology. – Any technology that provides access to digital media such as a camera, electronic mail, music, the Internet, or games.

(2) Mobile telephone. – A device used by subscribers and other users of wireless telephone service to access the service. The term includes: (i) a device with which a user engages in a call using at least one hand, and (ii) a device that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of the mobile telephone, by which a user engages in a call without the use of either hand, whether or not the use of either hand is necessary to activate, deactivate, or initiate a function of such telephone.

(3) Wireless telephone service. – A service that is a two-way real-time voice telecommunications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3.

(b) Offense. – Except as otherwise provided in this section, no person under the age of 18 years shall operate a motor vehicle on a public street or highway or public vehicular area while using a mobile telephone or any additional technology associated with a mobile telephone while the vehicle is in motion. This prohibition shall not apply to the use of a mobile telephone or additional technology in a stationary vehicle.

(c) Seizure. – The provisions of this section shall not be construed as authorizing the seizure or forfeiture of a mobile telephone, unless otherwise provided by law.

(d) Exceptions. – The provisions of subsection (b) of this section shall not apply if the use of a mobile telephone is for the sole purpose of communicating with:

(1) Any of the following regarding an emergency situation: an emergency response operator; a hospital, physician's office, or health clinic; a public or privately owned ambulance company or service; a fire department; or a law enforcement agency.

(2) The motor vehicle operator's parent or legal guardian.

(e) Penalty. – Any person violating this section shall have committed an infraction and shall pay a fine of twenty-five dollars ($25.00). This offense is an offense for which a defendant may waive the right to a hearing or trial and admit responsibility for the infraction pursuant to G.S. 7A-148. No drivers license points, insurance surcharge, or court costs shall be assessed as a result of a violation of this section."

SECTION 2. G.S. 20-11(c) reads as rewritten:

"(c) Level 1 Restrictions. – A limited learner's permit authorizes the permit holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The permit holder must be in possession of the permit.

(2) A supervising driver must be seated beside the permit holder in the front seat of the vehicle when it is in motion. No person other than the supervising driver can be in the front seat.

(3) For the first six months after issuance, the permit holder may drive only between the hours of 5:00 a.m. and 9:00 p.m.

(4) After the first six months after issuance, the permit holder may drive at any time.

(5) Every person occupying the vehicle being driven by the permit holder must have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The permit holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the motor vehicle on a public street or highway or public vehicular area."

SECTION 3. G.S. 20-11(d) reads as rewritten:

"(d) Level 2. – A person who is at least 16 years old but less than 18 years old may obtain a limited provisional license if the person meets all of the following requirements:

(1) Has held a limited learner's permit issued by the Division for at least 12 months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Passes a road test administered by the Division.

(4) Has a driving eligibility certificate or a high school diploma or its equivalent."

SECTION 4. G.S. 20-11(e) reads as rewritten:

"(e) Level 2 Restrictions. – A limited provisional license authorizes the license holder to drive a specified type or class of motor vehicle only under the following conditions:

(1) The license holder shall be in possession of the license.

(2) The license holder may drive without supervision in any of the following circumstances:

a. From 5:00 a.m. to 9:00 p.m.

b. When driving to or from work.

c. When driving to or from an activity of a volunteer fire department, volunteer rescue squad, or volunteer emergency medical service, if the driver is a member of the organization.

(3) The license holder may drive with supervision at any time. When the license holder is driving with supervision, the supervising driver shall be seated beside the license holder in the front seat of the vehicle when it is in motion. The supervising driver need not be the only other occupant of the front seat, but shall be the person seated next to the license holder.

(4) When the license holder is driving the vehicle and is not accompanied by the supervising driver, there may be no more than one passenger under 21 years of age in the vehicle. This limit does not apply to passengers who are members of the license holder's immediate family or whose primary residence is the same household as the license holder. However, if a family member or member of the same household as the license holder who is younger than 21 years of age is a passenger in the vehicle, no other passengers under 21 years of age, who are not members of the license holder's immediate family or members of the license holder's household, may be in the vehicle.

(5) Every person occupying the vehicle being driven by the license holder shall have a safety belt properly fastened about his or her body, or be restrained by a child passenger restraint system as provided in G.S. 20-137.1(a), when the vehicle is in motion.

(6) The license holder shall not use a mobile telephone or other additional technology associated with a mobile telephone while operating the vehicle on a public street or highway or public vehicular area."

SECTION 5. G.S. 20-11(f) reads as rewritten:

"(f) Level 3. – A person who is at least 16 years old but less than 18 years old may obtain a full provisional license if the person meets all of the following requirements:

(1) Has held a limited provisional license issued by the Division for at least six months.

(2) Has not been convicted of a motor vehicle moving violation or seat belt infraction or a violation of G.S. 20-137.3 during the preceding six months.

(3) Has a driving eligibility certificate or a high school diploma or its equivalent.

A person who meets these requirements may obtain a full provisional license by mail."

SECTION 6. G.S. 20-11(g) reads as rewritten:

"(g) Level 3 Restrictions. – The restrictions on Level 1 and Level 2 drivers concerning time of driving, supervision, and passenger limitations do not apply to a full provisional license. However, the prohibition against operating a motor vehicle while using a mobile telephone under G.S. 20-137.3(b) shall apply to a full provisional license."

SECTION 7. G.S. 20-11(l) reads as rewritten:

"(l) Violations. – It is unlawful for the holder of a limited learner's permit, a temporary permit, or a limited provisional license to drive a motor vehicle in violation of the restrictions that apply to the permit or license. Failure to comply with a restriction concerning the time of driving or the presence of a supervising driver in the vehicle constitutes operating a motor vehicle without a license. Failure to comply with the restriction regarding the use of a mobile telephone while operating a motor vehicle is an infraction punishable by a fine of twenty-five dollars ($25.00). Failure to comply with any other restriction, including seating and passenger limitations, is an infraction punishable by a monetary penalty as provided in G.S. 20-176. Failure to comply with the provisions of ~~subsection (e)~~ subsections (e) and (g) of this section shall not constitute negligence per se or contributory negligence by the driver or passenger in any action for the recovery of damages arising out of the operation, ownership or maintenance of a motor vehicle. Any evidence of failure to comply with the provisions of subdivisions (1), (2), (3), (4), and (5) of subsection (e) of this section shall not be admissible in any criminal or civil trial, action, or proceeding except in an action based on a violation of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with seating and occupancy limitations in subsection (e) of this section. No drivers license points or insurance surcharge shall be assessed for failure to comply with subsection (e) or (g) of this section regarding the use of a mobile telephone while operating a motor vehicle."

SECTION 8. This act becomes effective December 1, 2006, and applies to offenses committed on or after that date.

#2 reported out 7/6/06

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☒ House Committee Substitute for
SB 1289 A BILL TO BE ENTITLED AN ACT TO REDUCE FATALITIES AMONG NEW TEEN DRIVERS BY MAKING THE USE OF A MOBILE PHONE UNLAWFUL FOR A PERSON LESS THAN EIGHTEEN YEARS OF AGE AND WHO HOLDS A PROVISIONAL LICENSE WHILE DRIVING A MOTOR VEHICLE ON A PUBLIC STREET OR HIGHWAY OR PUBLIC VEHICULAR AREA, AS RECOMMENDED BY THE NC CHILD FATALITY TASK FORCE.

☒ With a favorable report as to House committee substitute bill 2, unfavorable as to House committee substitute bill 1.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 6, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tom Vitaglione	Action for Children
Selena Bere	Child Fatality Task Force
Brian Lewis	Covenant with NC's Children
Cameron Contrizano	Daily Bulletin
Andy Romanet	NCLM
Alex Mill	CNCC
Alex Sewell	Womble Carlyle
Mark Trawick	Donald Beaver Intern
Joe Stewart	IFRC
Kristin Kelly	gov. office
Carly Wiggs	gov. offices

House Pages

JUDICIARY IV

Name Of Committee: _____ Date: JULY 6, 2006

1. Name: Alex Board
   County: Wake
   Sponsor: Rep. Martin
2. Name: Ben Bralish
   County: Franklin
   Sponsor: Rep. Allen E.
3. Name: Nicholas Gillin
   County: Alamance
   → Sponsor: - he doesn't remember sponsor's name
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: FRED HINES
2. Name: WILL HEATH
3. Name: _____
4. Name: _____
5. Name: _____

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, July 11, 2006

The House Committee on Judiciary IV met on Tuesday, July 11, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Carolyn Justus, Grier Martin, Earline Parmon, Tim Spear and staff attorneys Trina Griffin, and Jennifer McGinnis and Steve Rose. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

A Proposed Committee Substitute for Senate Bill 1442, RUTHERFORD SUBDIVISIONS REPEAL, sponsored by Senator Dalton was presented. Representative Martin moved for adoption of the PCS for discussion. The motion was adopted.

Chairman Weiss introduced Senator Dalton to explain the first section of the bill which repeals provisions of a local law that allowed alternate subdivision regulations to state-wide regulations. Representative Melanie Wade Goodwin spoke on the second part of the Proposed Committee Substitute which deals with disbursement of civil penalties collected from the red light camera programs in Fayetteville, Rocky Mount and municipalities in Union County. Steve Rose, staff attorney, was asked to explain Section 2 of the Proposed Committee Substitute. He spoke on several issues that present themselves in considering the constitutionality of the PCS before the committee. One of the main issues is the definition of "clear proceeds". Discussion followed with Mr. Terry Scholar, City Attorney for the City of Monroe, NC stating his disagreement with the assessment of Mr. Rose by saying he feels that the courts are bound by G.S. 115C-437. He further spoke of the effectiveness of red light cameras in the Town of Monroe. There was further discussion and Chairman Weiss asked if, in Wake County, the proceeds go to the school system. The answer is the the county is deducting all costs and that no proceeds are going to the school system. Senator Eddie Goodall said that he supports the bill and would like to facilitate the decision for municipalities in Union County.

Chairman Weiss appointed a subcommittee to look at the second section of the bill. Members of the subcommittee are Representatives Glazier, Chair; Holloway, Martin and Parmon. The Chair announced that Judiciary IV will meet again tomorrow, July 12th, at noon in Room 415 to hear the report of the subcommittee.

There being no further business, the meeting was adjourned at 10:40.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; SB 1442: Copy of Bill, Proposed House Committee Substitute, Bill Analysis, Two Handouts from National Campaign to Stop Red Light Running, Visitor Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, July 11, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

SB 1442 – RUTHERFORD SUBDIVISIONS REPEAL.
Senator Dalton

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S 1

SENATE BILL 1442

Short Title:	Rutherford Subdivisions Repeal.	(Local)
Sponsors:	Senator Dalton.	
Referred to:	State and Local Government.	

May 17, 2006

A BILL TO BE ENTITLED

AN ACT REPEALING THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 2 and 3 of Chapter 313 of the 1979 Session Laws are repealed.

SECTION 2. This act applies to Rutherford County only.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1442
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1442-CSRL-57 [v.3]

7/10/2006 7:23:16 PM

Short Title: Rutherford Subdiv Repeal/Red Light Cameras. (Local)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT REPEALING THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW, TO PROVIDE FOR THE DISBURSEMENT OF CIVIL PENALTIES COLLECTED FOR VIOLATIONS DETECTED BY TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS IN FAYETTEVILLE, ROCKY MOUNT, AND THE MUNICIPALITIES OF UNION COUNTY, AND TO PROVIDE FOR A STUDY ON THE USE OF CLEAR PROCEEDS IN A MANNER THAT WILL ALLOW FOR THE CONTINUATION OF THE USE OF TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 2 and 3 of Chapter 313 of the 1979 Session Laws are repealed. This section applies to Rutherford County only.

SECTION 2. G.S. 160A-301.1(c) reads as rewritten

"(c) Municipalities may adopt ordinances for the civil enforcement of G.S. 20-158 by means of a traffic control photographic system, as described in subsection (a) of this section. Notwithstanding the provisions of G.S. 20-176, in the event that a municipality adopts an ordinance pursuant to this section, a violation of G.S. 20-158 at a location at which a traffic control photographic system is in operation shall not be an infraction. 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, within 30 days after notification of the violation, furnishes the officials or agents of the municipality which issued the citation either of the following:

a. An affidavit stating the name and address of the person or company who had the care, custody, and control of the vehicle.
b. An affidavit stating that the vehicle involved was, at the time, stolen. The affidavit must be supported with evidence that supports the affidavit, including insurance or police report information.

(1a) Subdivision (1) of this subsection shall not apply, and the registered owner of the vehicle shall not be responsible for the violation, if notice of the violation is given to the registered owner of the vehicle more than 90 days after the date of the violation.

(2) A violation detected by a traffic control photographic 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) shall be assigned to the owner or driver of the vehicle nor insurance points as authorized by G.S. 58-36-65.

(3) The owner of the vehicle shall be issued a citation which shall clearly state the manner in which the violation may be challenged, and the owner shall comply with the directions on 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 a civil penalty not to exceed one hundred dollars ($100.00). The municipality may establish procedures for the collection of these penalties and may enforce the penalties by civil action in the nature of debt.

(4) The municipality shall institute a nonjudicial administrative hearing to review objections to citations or penalties issued or assessed under this section.

(5) The clear proceeds from the citations issued pursuant to an 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 traffic control photographic system; paying a contractor for operation of the system; and paying any administrative costs incurred by the municipality related to the use of the system. This subdivision applies only to the Cities of Fayetteville and Rocky Mount, and the municipalities of Union County."

SECTION 3. The Legislative Research Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General

Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

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

SENATE BILL 1442: Rutherford Sudiv Repeal/Red Light Camera Proceeds

BILL ANALYSIS

Committee:	House Judiciary IV	**Date:**	July 11, 2006
Introduced by:	Sen. Dalton	**Summary by:**	Steven Rose
Version:	PCS to First Edition S1442-CSRL		Committee Counsel

SUMMARY: ***Section 1 of the Proposed Committee Substitute for SB 1442 repeals provisions of a local law that allowed alternate subdivision regulations to those applicable State-wide.***

The Proposed Committee Substitute for SB 1442 also amends G.S. 160A-301.1(c) to provide for the disbursement of civil penalties collected from the red light camera programs in Fayetteville, Rocky Mount, and the municipalities of Union County. The bill provides for disbursement of the clear proceeds of the penalties after deducting the costs of leasing or purchasing the camera system that detects and photographs a vehicle entering the intersection against a red light, as well as the costs of a contractor to operate the system, and any administrative costs of the municipality related to the use of the system. This provision probably will violate Article IX, Section 7 of the North Carolina Constitution, as discussed below.

The Proposed Committee Substitute also provides for an LRC study of the impact of court decisions on the use of clear proceeds as related to red light camera programs, allowing the LRC to recommend statutory changes that will allow the use of clear proceeds in a manner that will permit the continued operation of these traffic control systems.

CURRENT LAW: Section 1 of the bill repeals provisions of the local law that allowed alternate subdivision regulations; consequently, Rutherford County would be subject to the current State-wide subdivision regulations.

In Section 2 of the bill, G.S. 160A-301.1 currently has no provision for disbursement of the penalties collected.

BILL ANALYSIS: This analysis pertains to Section 2 of this bill. Section 2 purports to address a problem encountered by the City of High Point, which also operates under this statute. In May 2006, the North Carolina Court of Appeals, in *Shavitz v. City of High point,* held that High Point, which disbursed the collected penalties in a way similar (though not exactly the same) as is contemplated in this bill, was in violation of Article IX, Section 7 of the North Carolina Constitution (citations are omitted in this summary, but can be provided), which provides that the "clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State" belongs to the counties and must be used for maintaining free public schools. The City of High Point was required to pay to the Guilford County Board of Education the sum of $1,453,703.40, plus or minus some additional amounts based on money yet to be received and citation appeals yet to be decided.

Several issues are presented in considering the constitutionality of the bill before the Committee:

1. *Does the fact that the red light camera legislation deems this violation a non-criminal violation for which a civil penalty is exacted make any difference in the application of the Constitutional provision?* No. The courts have said that the purpose of money extracted from the violator is controlling. If the penalty is punitive and imposed to deter future violations and exact retribution for illegal behavior, then the clear proceeds belong to the county schools. The Court of Appeals

specifically stated that this applied to the red light camera program authorized in the statute being amended by this bill.

2. *What does the term "clear proceeds" mean? What may be deducted from the money collected for a violation of the law before it is remitted to the schools?* "Clear proceeds" has been held to mean the full amount collected for violation of the law, less only the costs of collection. The courts of our State have drawn a line between the costs of enforcement and the costs of collection. Enforcement costs may not be deducted in arriving at the clear proceeds. This rule goes back *at least* to the 1985 Supreme Court opinion in *Cauble v. City of Asheville ("Cauble IV")*, part of a series of landmark cases concerning this issue. The red light camera system operator in the *High Point* case argued that amounts paid to it for the cameras and the system's operation (and the appeal process) could be deducted from the amounts payable to the Guilford County Board of Education. The Court of Appeals responded by stating: "This assertion is nonsensical, as these expenditures clearly constitute enforcement costs rather than collection costs." (In other words, the camera and its operators are the cop.) The Court also said that the payments to the hearing officers who heard contested cases could not be deducted because it is the same as paying judges in regular traffic cases.

3. *Does the General Assembly have discretion in determining what and how much may be deducted from the amounts collected in order to arrive at clear proceeds?* Yes, but not to the point of contravening the requirements of Article IX, Section 7 of the Constitution. In the *High Point* decision, the Court of Appeals makes that point, quoting the from *Cauble IV* and earlier Supreme Court decisions, as well as an article in the North Carolina Law Review by Professor David Lawrence of the Institute of Government. Where the General Assembly has exercised that discretion in other statutes (with the exception of the red light camera authorization statutes), it has allowed only the deduction of the costs of collection not to exceed a specific percentage. For example, G.S. 115C-437, which governs distribution of various funds to local school boards, provides: "The clear proceeds of all penalties and forfeitures and of all fines collected for any breach of the penal laws of the State, as referred to in Article IX, Sec. 7 of the Constitution, shall include the full amount of all penalties, forfeitures or fines collected under authority conferred by the State, *diminished only by the actual costs of collection, not to exceed ten percent (10%) of the amount collected."* The Court in *High Point* held that this statute would apply to the red light camera proceeds of the High Point program. The other red light camera statutes were not before the Court.

The City of High Point has filed a petition for discretionary review with the North Carolina Supreme Court. However, the opinion that this bill is probably unconstitutional is based not just on the decision in *Shavitz v. City of High Point*, but on a careful reading of the decisions of the Supreme Court and Court of Appeals that have come before it, and upon which it is based. This leads me to the conclusion that the provisions allowing the deduction of the acquisition and operation of the camera system probably violate Article IX, Section 7 of the North Carolina Constitution. The administration costs permitted are problematic in that the term is vague. If they are collection related, they would be permitted, but one cannot tell what they are from the language of the bill.

EFFECTIVE DATE: Effective when it becomes law.

National Campaign to Stop Red Light Running

North Carolina Red Light Camera Fact Sheet

Q: How did local municipalities get the authority to install red light cameras?
A: A 1997 state law created the basic framework for automated enforcement in the state. The initial legislation required that all photographic systems meet NCDOT requirements, and that the only penalty be a civil fine of $50: no driver's license points were permitted to be assigned.

Q: What is the root issue behind the High Point court case?
A: The lawsuit contends that the High Point red light camera program violates the state constitution because local school systems do not receive a share of the violation fines. The key problem is that the communities using red light cameras in North Carolina use most of the $50 violation fine to cover the operating costs of the programs.

Q: How will the recent High Point court ruling impact North Carolina's red light cameras?
A: The issue under review is whether red light camera revenues are subject to the state constitutional requirement that local revenues support public education. If the courts decide that the local school systems are entitled to receive a significant portion of that funding, then communities (i.e. the public) will either have to bear the costs of running the programs, or eliminate them. Legislative adjustments were made regarding the red light camera programs in Wake County in 2001, and it is believed that they would not be subject to the High Point court ruling if it stands.

Q: What are the safety benefits of red light cameras in North Carolina?
A: One of the largest federal studies of red light cameras included statistics from the City of Charlotte. The study found that red light cameras have a direct value to public safety since they reduce right-angle (t-bone) crashes, which are the most serious type of vehicle crash. The study found that each red light cameras in the seven cities involved in the study were responsible for over $14 million per year in reduced societal costs (emergency health care, insurance, and other public costs associated with crashes).

The City of Wilmington estimates that the reduced crashes from red light running saved the public approximately $3.8 million from 2001 to 2004.

(FOR OTHER NORTH CAROLINA PROGRAM RESULTS, SEE ATTACHED CHART)

Q: What will happen if North Carolina's red light programs are shut down?
A: Red light running crashes and violations will almost certainly increase. The City of Virginia Beach, VA experienced an almost 100 percent jump in red light running violations over six months at the intersections that had been equipped with red light cameras after the city was forced to shut down its camera program when the state authorizing law was allowed to expire.

Q: How often do North Carolina drivers challenge red light camera violations?
A: According to a 2004 AAA Carolina study, the percentage of tickets appealed is quite low, ranging from one to three percent. This should be reflective of the quality control review process at the local level. The vast majority of citations are upheld.

Advisory Board:
Barbara Harsha
Governors Highway Safety Association

Brian O'Neill
Insurance Institute for Highway Safety

Judith Lee Stone
Advocates for Highway and Auto Safety

Harry Teter
American Trauma Society

Ricardo Martinez, M.D.
Emory University

Ann Sweet
Focus on Safety

Bill Wilkinson
National Center for Bicycling and Walking

Earl Sweeney
New Hampshire Dept. of Public Safety

Louis Blanas
Sacramento County Sheriff

Honorable Allen Fields
Chief Justice, Republic of the Marshall Islands

Peter Harkness
Publisher and Editor Governing Magazine

Anthony Kane
American Assoc. of State Highway and Transportation Officials

Chief Terry Gainer
U.S. Capitol Police

John Ulczycki
National Safety Council

Bryan Porter, Ph.D
Old Dominion Univ.

1150 18th Street, NW – Suite 1030 – Washington, D.C. 20036 – Phone 202-828-9100 – Fax 202-828-9112
www.stopredlightrunning.com

National Campaign to Stop Red Light Running

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North Carolina Red Light Camera Statistics

SPECIFIC RESULTS BY CITY

Cary	One intersection saw violations drop from a high of over 500 in early 2004 to just 52 in November 2004. The city is waiting for 18 continuous months of data from all locations before conducting a thorough crash study, however, preliminary evidence also suggests a drop in crashes.
Charlotte	In Charlotte, red light cameras have helped reduce crashes by 19 percent overall – by 37 percent at the 22 camera intersections, and by 60 percent on the stretches of street approaching the cameras.
Fayetteville	Fayetteville has studied traffic data for three years of data before and then three years after the intersections where cameras were installed. Total crashes have dropped from 256 to 214. Right-angle crashes dropped from 91 to 47, a drop of almost 50 percent. Rear-end crashes increased by two.
Greensboro	Red light violations dropped 20 percent after the cameras were installed. Right-angle crashes dropped from between 23 to 29 percent.
High Point	Total crashes decreased 15 percent, and right-angle crashes 23 percent in the first year. Total crashes had decreased 9 percent and right-angle crashes 29 percent in the second year.
Indian Trail	No program data available.
Knightdale	New program. No crash or violation reduction information was available.
Marshville	Crashes at the city's monitored intersection have dropped 42 percent.
Monroe	Monroe has reported crashes at monitored intersections down by 42 percent and a 50 percent drop in red light violations.
Raleigh	The Institute for Transportation Research and Education at North Carolina State University found right-angle crashes were reduced by 42 percent at red-light camera intersections, rear-end crashes went down 25 percent and the total red-light related crashes decreased by 22 percent.
Rocky Mount	Rocky Mount saw total crashes decrease 31 percent, with rear end crashes dropping by 23 percent, and right-angle crashes by 17 percent at the intersections with cameras. On the actual approaches with cameras in place, total crashes decreased 28 percent, rear end crashes 25 percent, and angle crashes 25 percent.
Stallings	Stallings has seen crashes drop 96 percent at its monitored intersection.
Wilmington	Reports a 31 percent drop in crashes at camera intersections and a 39 percent drop in personal injuries from red light running crashes.

1150 18th Street, NW – Suite 1030 – Washington, D.C. 20036 – Phone 202-828-9100 – Fax 202-828-9112
www.stopredlightrunning.com

VISITOR REGISTRATION SHEET

JUDICIARY IV — July 11, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Skeen	City of Monroe P.O. Box 69 Monroe
Jim Johnson	ACS
Doug Miskew	ACS
Sen. Eddie Goodall	Senator
CASANDRA WHITE	NCCCPS

House Pages

JUDICIARY IV

Name Of Committee: _____ Date: JULY 11, 2006

1. Name: Brennan Carpenter
   County: Mecklenburg
   Sponsor: Speaker Black
2. Name: Scott Possiel
   County: Wake
   Sponsor: Yongue
3. Name: Seth Morris
   County: Rowan
   Sponsor: Coates
4. Name: Marina S. Morris
   County: Pender
   Sponsor: Jones
5. Name: Nicole Carpenter
   County: mecklenburg
   Sponsor: Jim Black

Sgt-At-Arms

1. Name: Fred Hines
2. Name: Martha Parrish
3. Name: Louise Arant
4. Name:
5. Name:

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
Wednesday, July 12, 2006

The House Committee on Judiciary IV met in a called meeting on Wednesday, July 12, 2006 in Room 415 of the Legislative Office Building at 12:00 noon. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bryan Holloway, Grier Martin, Earline Parmon, Tim Spear and staff attorneys Trina Griffin, and Jennifer McGinnis and Steve Rose. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss announced that the committee would continue the discussion on Senate Bill 1442, RUTHERFORD SUBDIVISIONS REPEAL, and introduced Representative Melanie Wade Goodwin who was present to answer any questions on the bill. She thanked the subcommittee members, Representatives Rick Glazier, Chair; Holloway, Martin and Parmon for the work they did on the bill. A new Proposed Committee Substitute was presented. Representative Parmon moved to adopt the PCS for discussion. The motion was adopted. Chairman Weiss asked Representative Glazier to give the report of the subcommittee. Representative Glazier reported that there are significant constitutional issues with the bill and that there are problems in meshing constitutional provisions with several statutory provisions. The subcommittee, given that session is close to adjournment, gives unanimous recommendation for a favorable report on Senator Dalton's bill, the first section of the bill; for the second section of the bill, the red light issue, the recommendation is to ask the Legislative Research Commission to study the impact of the decisions of the NC Court of Appeals and Supreme Court on the definition of "clear proceeds" as it relates to these issues to see if there is a way either through a business model or through statutory model to try to deal with the issues. Chairman Weiss reviewed that Section 1 of the bill is Senator Dalton's bill; Section 2 directs the study. Representative Parmon moved to give a favorable report to the Proposed House Committee Substitute, unfavorable to the original bill. A second motion is that the Rules chairs inform the Chair if the bill will not be eligible because it becomes a public bill due to the study and, in the alternative; there is a favorable report to the first edition of the bill (Senator Dalton's bill) to keep Senator Dalton's bill from getting tangled up. Rep. Weiss announced that either way Senator Dalton's bill will go forward. The motion was adopted.

There being no further business, the meeting was adjourned.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; SB 1442: Proposed House Committee Substitute, House Committee Substitute, Committee Report, Visitor Registration List, Listing of Pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Wednesday, July 12, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

SB 1442 – RUTHERFORD SUBDIVISIONS REPEAL.
Senator Dalton

REPORT OF SUB-COMMITTEE ON SB 1442

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1442
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1442-CSRL-59 [v.1]

Short Title: Rutherford Subdiv Repeal/Red Lt Camera Study. (Public)

Sponsors:

Referred to:

May 17, 2006

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW, AND TO PROVIDE FOR A STUDY ON THE USE OF CLEAR PROCEEDS IN A MANNER THAT WILL ALLOW FOR THE CONTINUATION OF THE USE OF TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS BY LOCAL GOVERNMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Sections 2 and 3 of Chapter 313 of the 1979 Session Laws are repealed. This section applies to Rutherford County only.

SECTION 2. The Legislative Research Commission may study the impact of the various decisions of the North Carolina courts on the definition of clear proceeds as it relates to the funding and operation of traffic control photographic systems by cities and towns in the State. The Commission may recommend to the General Assembly statutory changes that define clear proceeds in a manner that allows their use for the continued operation of these traffic control systems.

SECTION 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

S D

SENATE BILL 1442
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1442-PCS75563-RL-59

Short Title: Rutherford Subdiv Repeal/Red Lt Camera Study. (Public)

Sponsors:

Referred to:

May 17, 2006

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SECTION 3. This act is effective when it becomes law.

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

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

☐ Committee Substitute for
SB 1442 A BILL TO BE ENTITLED AN ACT REPEALING THE LOCAL MODIFICATIONS OF G.S. 153A-335 PERTAINING TO THE REGULATION OF SUBDIVISIONS IN RUTHERFORD COUNTY AND THEREBY SUBJECTING THE COUNTY TO FULL APPLICATION OF THE GENERAL LAW.

☒ With a favorable report as to the House committee substitute bill, which changes the title, unfavorable as to the original bill..

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the (House/Senate) committee substitute bill/(joint) resolution (No._____) is placed on the Calendar of _____. (The original bill resolution No._____) is placed on the Unfavorable Calendar.

_____ The (House) committee substitute bill/(joint) resolution (No. ____) is re-referred to the Committee on _____. (The original bill/resolution) (House/Senate Committee Substitute Bill/(Joint) resolution No. ___) is placed on the Unfavorable Calendar.

VISITOR REGISTRATION SHEET

JUDICIARY IV — JULY 12, 2006

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rita L. Joyner	SBE
Harry Wilson	SBE
Jim Johnson	ACS
Doug Mosley	ACS
Molly Byrne	NCSBA
K Garland	JBE
Leanne Winner	NCSBA
Cam Cook	BPMHC

House Pages

JUDICIARY IV

Name Of Committee: _____ Date: JULY 12, 2006

1. Name: Erin Woodlief
   County: Nash
   Sponsor: Fisher
2. Name: Johnnie Bauguess
   County: Alamance
   Sponsor: Allred
3. Name: Sarah Flowers
   County: Wake
   Sponsor: Fisher
4. Name: Avery Weisel
   County: Wake
   Sponsor: Morgan
5. Name: Cody Hall
   County: Stokes
   Sponsor: Holloway

6 Seth Morris
Rowan
Coates

7 Brittney Hawkins
Gaston
Current

8 Spencer Keeling
Buncombe
Goforth

Sgt-At-Arms

1. Name: FRED HINES
2. Name: MARK CONE
3. Name: _____
4. Name: _____
5. Name: _____

MINUTES

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, July 18, 2006

The House Committee on Judiciary IV met on Tuesday, July 18, 2006 in Room 415 of the Legislative Office Building at 10:00 a.m. The following committee members and staff were present: Chairman Jennifer Weiss, Vice-Chair Rick Glazier, Vice-Chair Joe Kiser, Representatives Bryan Holloway, Carolyn Justus, Grier Martin, Earline Parmon, Tim Spear and staff attorneys Trina Griffin, Steve Rose and Jennifer McGinnis. The pages and sergeants-at-arms serving at the meeting were introduced. A Visitor Registration list is attached and made part of these minutes.

Chairman Weiss welcomed members and visitors to the committee and announced that Senate Committee Substitute for House Bill 1231, PROHIBIT EXTREME PRICING PRACTICES, was in Judiciary IV for concurrence. She introduced Representative Glazier to speak on the bill.

Representative Glazier stated that the bill is a consensus bill of the North Carolina Petroleum Marketers Association, Retail Merchants Association, American Petroleum Institute and the North Carolina Attorney General's office, and that it passed in the Senate by a vote of 48-2. The bill is a result of two weaknesses in our law that became apparent after Hurricane Katrina (August, 2005). Those two weaknesses are that the trigger for our law is too narrow because it did not take effect even with the market disruption we experienced, and the law applies only to retailers, not to suppliers, wholesalers, or manufacturers. The purpose of this bill is to strengthen our price gouging law by remedying these two deficiencies. Steve Rose, staff attorney, then went through the bill and stated that there are two technical changes that need to be made in the bill. He said that those changes should be made in the technical corrections bill rather than in committee.

Mr. Josh Stein, Head of Consumer Protection Division, North Carolina Attorney General's office, said that all interested parties from various trade associations have come together to slightly broaden this law to protect the consumer and that the primary benefit of this law is not the prosecution side but the deterrent side. Discussion on the bill followed with Mr. Stein answering questions posed by the members.

Following discussion, Representative Glazier moved to recommend the House concur with the Senate Committee Substitute for House Bill 1231. The motion was adopted.

There being no further business, the meeting was adjourned at 10:40 a.m.

Respectfully submitted,

Jennifer Weiss
Representative Weiss
Chairman

Susan Doty
Susan Doty
Committee Assistant

Attachments: Agenda; HB 1231: Copy of Bill, Committee Report, Visitor Registration List, Listing of Pages

DRAFT MINUTES

HOUSE COMMITTEE ON JUDICIARY IV
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Following discussion, Representative Glazier moved to recommend the House concur with the Senate Committee Substitute for House Bill 1231. The motion was adopted.

There being no further business, the meeting was adjourned at 10:40 a.m.

Respectfully submitted,

Representative Weiss
Chairman

Susan Doty
Committee Assistant

Attachments: Committee Report, HB 1231, Agenda, Visitor Registration List, listing of pages.

AGENDA

HOUSE COMMITTEE ON JUDICIARY IV

Tuesday, July 18, 2006
Room 415 LOB
10:00 AM

OPENING REMARKS

Representative Jennifer Weiss, Chairman

AGENDA:

HB 1231 – PROHIBIT EXTREME PRICING PRACTICES.
Representatives Steen and Williams

ADJOURNMENT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

H 3

HOUSE BILL 1231

Committee Substitute Favorable 8/23/05

Senate Commerce Committee Substitute Adopted 7/11/06

Short Title: Prohibit Extreme Pricing Practices. (Public)

Sponsors:

Referred to:

April 14, 2005

A BILL TO BE ENTITLED

AN ACT TO PROTECT CONSUMERS FROM EXTREME PRICING PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 75-38 reads as rewritten:

"**§ 75-38. Prohibit excessive pricing during states of ~~disaster.~~disaster, states of emergency, or abnormal market disruptions.**

(a) Upon a triggering event, ~~It~~ it is prohibited and shall be a violation of G.S. 75-1.1 for any person to sell or rent or offer to sell or rent ~~at retail during a state of disaster, in the area for which the state of disaster has been declared,~~ any ~~merchandise~~goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or ~~comfort~~economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances. This prohibition shall apply to all parties in the chain of distribution, including, but not limited to, a manufacturer, supplier, wholesaler, distributor, or retail seller of goods or services. This prohibition shall apply in the area where the state of disaster or emergency has been declared or the abnormal market disruption has been found.

In determining whether a price is unreasonably excessive, it shall be considered whether:

(1) The price charged by the seller is attributable to additional costs imposed by the seller's supplier or other costs of providing the good or service during the ~~state of disaster; and~~triggering event.

(2) The ~~seller offered to sell or rent the merchandise or service at a price that was below the~~ price charged by the seller exceeds the seller's average price in the preceding 60 days before the ~~state of disaster.~~triggering event. If the seller did not sell or rent or offer to sell or rent the ~~merchandise~~ goods or service in question prior to the time ~~the state of disaster was declared,~~ of the triggering event, the price at

which the ~~merchandise~~ goods or service was generally available in the trade area shall be used as a factor in determining if the seller is charging an unreasonably excessive price.

(3) The price charged by the seller is attributable to fluctuations in applicable commodity markets; fluctuations in applicable regional, national, or international market trends; or to reasonable expenses and charges for attendant business risk incurred in procuring or selling the goods or services.

(b) In the event the Attorney General investigates a complaint for a violation of this section and determines that the seller has not violated the provisions of this section and if the seller so requests, the Attorney General shall promptly issue a signed statement indicating that the Attorney General has not found a violation of this section.

(c) For the purposes of this section, the end of a ~~state of disaster~~ triggering event is the earlier of 45 days after the triggering event occurs or the expiration or termination of the triggering event unless the prohibition is specifically extended by the Governor.~~a natural or man-made disaster or emergency as declared in accordance with G.S. 166A-6 or G.S. 166A-8.~~

(d) A "triggering event" means the declaration of a state of emergency pursuant to G.S. 166A-8, the proclamation of a state of disaster pursuant to Article 36A of Chapter 14 of the General Statutes, G.S. 166A-6, or a finding of abnormal market disruption pursuant to G.S. 75-38(e).

(e) An "abnormal market disruption" means a significant disruption, whether actual or imminent, to the production, distribution, or sale of goods and services in North Carolina, which are consumed or used as a direct result of an emergency or used to preserve, protect, or sustain life, health, safety, or economic well-being of a person or his or her property. A significant disruption may result from a natural disaster, weather, acts of nature, strike, power or energy failures or shortages, civil disorder, war, terrorist attack, national or local emergency, or other extraordinary adverse circumstances. A significant market disruption can be found only if a declaration of a state of emergency, state of disaster, or similar declaration is made by the President of the United States or an issuance of Code Red/Severe Risk of Attack in the Homeland Security Advisory System is made by the Department of Homeland Security, whether or not such declaration or issuance applies to North Carolina.

(f) The existence of an abnormal market disruption shall be found and declared by the Governor pursuant to the definition in subsection (e) of this section. The duration of an abnormal market disruption shall be 45 days from the triggering event, but may be renewed by the Governor if the Governor finds and declares the disruption continues to affect the economic well-being of North Carolinians beyond the initial 45-day period."

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

2005 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES

The following report(s) from standing committee(s) is/are presented:

By Representative Weiss (Chair) for the Committee on JUDICIARY IV.

Senate ☒ Committee Substitute for

HB 1231 A BILL TO BE ENTITLED AN ACT TO PROTECT CONSUMERS FROM EXTREME PRICING PRACTICES.

☒ With recommendation that the House concur.

(FOR JOURNAL USE ONLY)

_____ Pursuant to Rule 32(a), the bill/resolution is re-referred to the Committee on _____.

_____ Pursuant to Rule 36(b), the bill/resolution is placed on the Calendar of _____.

VISITOR REGISTRATION SHEET

JUDICIARY IV — **Name of Committee**

JULY 18, 2006 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Weatherspoon	NC Petroleum Council
Floyd Landis	Phonak
Josh Stein	NC AGO
Ed Turlington	Bell
Andy Ellen	NCRMA
Rebecca Barringer	ga. office
Elizabeth Dalton	NCRMA
Stephen Thompson	NCAR
Lauren Rogers	NCFPC

House Pages

Name Of Committee: J-IV Date: July 18, 2006

1. Name: Beth Hrischuk
   County: Wake
   Sponsor: Stam
2. Name: Chelsey Carclas
   County: Wake
   Sponsor: Kiser
3. Name: _____
   County: _____
   Sponsor: _____
4. Name: _____
   County: _____
   Sponsor: _____
5. Name: _____
   County: _____
   Sponsor: _____

Sgt-At-Arms

1. Name: Fred Hines
2. Name: Mark Cone
3. Name: _____
4. Name: _____
5. Name: _____

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2005-06 House Pensions & Retirement
2005-06 House Public Utilities
2005-06 House Rules
2005-06 House Science & Technology